From: Sarah C. Harlan
To: *TE/GE-EO-F990-Revision;
Subject: Comment re draft Instructions for 2008 Form 990 Schedule F
Date: Friday, May 30, 2008 12:52:46 AM

To the Internal Revenue Service:

Thank you for this opportunity to comment on the draft Instructions for the 2008 Form 990 and Schedules. I was formerly a tax partner and National Director of Healthcare Tax for the 125 United States offices of Arthur Young, CPAs, a former "Big 8" CPA firm, and presently have my own CPA firm specializing in tax advisory services to tax-exempt healthcare organizations.

The following consists of a summary of my two comments regarding Schedule F, Part II, Line 2, followed by a discussion of each comment.

Comments regarding Schedule F, Part II, Line 2:

SUMMARY:

(1) The Instructions ask for more than is requested by Line 2 itself.

(2) The information requested by Line 2 may not be possessed by the Form 990 filing organization, and may not be obtainable by the filing organization, because it is not necessary for a Form 990 filer (as contrasted to a Form 990-PF filer) to obtain such information in order to give a grant or other assistance to a foreign organization or foreign entity.

DISCUSSION OF COMMENTS:

COMMENT (1): The draft Instructions for Sch. F, Part II, Line 2 request more data than is requested by the actual Line 2 on Sch. F, Part II:

Sch. F, Part II, Line 2 reads:
"Enter total number of organizations that are recognized as charities by the foreign country or for which the grantee or counsel has provided a section 501(c)(3) equivalency letter."

The draft Instructions for this Line read:
"Add the number of recipient foreign organizations listed in line 1 above (a) that are recognized by the Internal Revenue Service as exempt from federal income tax as described in section 501(c)(3), (b) that are recognized as a charity by a foreign country, or (c) for which the

grantee or counsel has provided a section 501(c)(3) equivalency letter. Enter total."

As you see, the draft Instructions have three sections, (a), (b) and (c), whereas Line 2 itself does not mention (a).

Item (a) is completely different than (b) & (c). The Service has made it clear that no further changes can be made to the 2008 Form 990 or its Schedules. However, the Instructions should not "cure" an omission in the Form or Schedules by adding requirements in the Instructions that create a discrepancy between the Instructions and the Form and Schedules; such discrepancy will cause confusion and may cause the reporting organization to be treated as filing an incomplete Form and/or Schedules.

I recommend that item (a) be removed from the Instructions so that the Instructions match the actual Line 2 wording.

COMMENT (2): Information requested by Line 2 (items (b) and (c) in the draft Instructions):

A Form 990 filer is not necessarily required to determine the information requested by Line 2. The organization's Articles of Incorporation and Bylaws, not the Internal Revenue Code & Treasury Regulations, determine whether the organization may provide grants or other assistance to organizations or entities outside the United States. In contrast, a private foundation filing Form 990-PF may be required by the Internal Revenue Code and Treasury Regulations to obtain Line 2 information, but such information is not required for a nonprivate (public) foundation filing Form 990.

For example, Form 990 filers that are healthcare providers send medical supplies to organizations and entities outside the United States, and do not have to determine whether the recipients are recognized as a charity by a foreign country, and do not have to obtain a section 501(c)(3) equivalency letter from the grantee or its counsel.

I recommend, since the Service wishes no changes to be made to Schedule F itself, that the Instructions for Sch. F, Part II, Line 2 state that answering Line 2 is optional, at least for a transition period.

Thank you for your consideration of these comments.

Sincerely,
Sarah C. Harlan, CPA
Tax Advisor to the Tax-Exempt Healthcare Field

Telephone: 503-636-4977
Fax: 503-636-4978

From: Sanderson, Joan
To: *TE/GE-EO-F990-Revision;
Subject: IRS Form 990 Revision - sent on behalf of Richard Morrison, Adventist Health System
Date: Friday, May 30, 2008 9:05:24 AM
Attachments: Document.pdf

Please open the attached document. This document was digitally sent to you using an HP Digital Sending device.

Adventist
HEALTH SYSTEM

May 30, 2008

IRS Form 990 Revision

These comments are submitted in response to the Internal Revenue Service's (IRS) release of draft instructions for the redesigned Form 990 released in December 2007. The Service is accepting comments through June 1, 2008.

The stated purpose of the Form 990 and related supplemental information forms is to foster greater understanding of the charitable tax exempt hospital sector and its compliance with the existing federal tax law, including the currently applicable Community Benefit Standard.

Much of the new information required by the new 990 form is designed to quantify the charity care provided by all hospitals on an annual basis. However, the controversy that gave rise to the redesign of the 990 form and a number of areas covered by the questionnaire, including, for example, joint ventures, governance and compensation and sale of assets, suggest a potential substantive change of the standards applicable to the operation of non-profit hospitals and a potential review of the existing Community Benefit Standard enunciated in Revenue Ruling 69-145 and Revenue Ruling 83-157.

We believe Revenue Rulings 69-145 and 83-157 were correctly decided and that all of our organizational activities provide a benefit to the communities we serve. At the same time, we do not believe organizations should be able to abuse not-for-profit status. One way of doing this is by accumulating large sums of capital that are not expended for the benefit of the community. In this regard, we believe two important measurements should be included in the new 990 form. Each of these would provide meaningful information about the community benefit performance of the not-for-profit hospital sector and be consistent with previous IRS rulings.

Cash on Hand

All not-for-profit institutions should report how much money they have retained to cover future operating costs. This is a standard accounting measure and an indicator of whether a not-for-profit is using its earnings for community benefit. Hospitals need to have cash reserves for sound bond ratings that, in turn, permit for affordable financing of projects and lower operating expense. This prudential requirement must be balanced with the mission to use revenues to expand services to meet community needs. It is our view that up to 285 days of cash on hand is a sufficient standard for fiscal soundness. Cash on hand beyond that amount should be used to pay down debt or to expand services.

Capital Expenditures

Florida Division | 2400 Bedford Road | Orlando, Florida 32803 | 407-303-6611

The Community Benefit Standard articulated in IRS Revenue Ruling 83- 157 also requires a measurement of the long term economic value provided by not-for-profit hospitals. Capital investment in facilities and equipment, including capital expansion is such a measurement. To have meaning, this must be measured over a longer time horizon than a year to have any meaning. We recommend requiring institutions to report capital expenditures on a rolling five year basis. As the Service has recognized, ". . . the application of any surplus to improving facilities, equipment, patient care, and medical training, education, and research, indicate the that the hospital is operating exclusively to benefit the community. . . ." (Revenue Ruling 83-157). Thus, the IRS should require hospitals to report on each year's Form 990 their capital expenditures for plant and equipment for the last five years as well as their projected capital expenditures for the upcoming three year period.

In summary, we believe the existing IRS policy states the correct standard for measuring community benefit. The existing law and rulings assume that not-for-profit hospitals will use available assets to provide community benefits. As drafted, the proposed 990 Form will not obtain information necessary to determine whether hospitals are deploying available assets, both short and long term, to provide maximum benefits to their respective communities. Short and long term reserves are necessary to maintain economic viability. Capital accumulations beyond a reasonable reserve, both short and long term, may not be justifiable from a tax policy perspective. Our suggestions changes are designed to ensure that accurate information on these items is made available and that not for profit entities are more accountable for use of community resources.

Sincerely,

Richard E Morrison

Richard E. Morrison
Vice President
Adventist Health System

From: Laura Bennett
To: *TE/GE-EO-F990-Revision;
cc: Shirley Walker;
Subject: PAR Comments on Draft Form 990 Instructions
Date: Friday, May 30, 2008 9:45:35 AM
Attachments: Comments 2008.0530 Draft IRS Form 990 Instructions.doc

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Attached please find comments on the draft Form 990 instructions. Thank you.

Laura Bennett
Sr. Policy Analyst/Compliance Officer
Pennsylvania Association of Resources
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May 30, 2008

IRS
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., NW.
Washington, DC 20224

Re: Draft Instructions for Revised Form 990

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Dear Ms. Lerner, Mr. Schultz, and Ms. Livingston:

Thank you for the opportunity to provide comments and recommendations on the draft instructions to the recently revised Form 990. The Pennsylvania Association of Resources for Autism and Intellectual Disabilities (PAR) is a 501(c)(3) nonprofit educational organization whose members provide the full range of supports and services to more than 45,000 individuals with intellectual disabilities including 8,000 people living with autism in over 5,600 locations in Pennsylvania.

PAR strongly supports the principles that guided the IRS's redesign of the Form 990 and the related instructions:

- Enhancing transparency to provide the IRS and the public with a realistic picture of the organization;
- Promoting compliance by accurately reflecting the organization's operations so the IRS may efficiently assess the risk of noncompliance; and
- Minimizing the burden on filing organizations.

In keeping with these principles, PAR offers the following comments and recommendations.

General Comment:

We appreciate the release of the draft instructions well in advance of the need to use the new Form 990; however, we are concerned that many nonprofit organizations have not had adequate time to thoroughly review the draft instructions. In reality, most nonprofits are focused on filing for the current fiscal year using the current form 990. As a result, the IRS will likely receive many questions

and comments closer to the time when the new form must be used (as the National Council of Nonprofit Associations also pointed out in their comments). **Recognizing this, PAR urges the IRS to revise the instructions based on the comments, like these, that you receive and then further revise the instructions at a later date based on continued feedback from the sector.** This will help ensure that the instructions and the form itself are workable and achieve the purposes for which they were designed.

Section: Form 990 Core Part VI – Governance

Line 8 Documentation of meetings and actions.

This section defines contemporaneous documentation as *(1) the next meeting of the governing body or committee (e.g., approving the minutes of the prior meeting), or (2) 60 days after the date of the meeting or written action.*

It would be useful to insert the word "regular" in #1 since sometimes urgently-called special meetings of the board or committee in which one topic is on the agenda and all other action (like minutes, treasurer's report, committee reports, etc.) is suspended until the next regular meeting, occurs. Also, sometimes it is better to have a first reading of the minutes at one meeting and have approval of the minutes at the next meeting. Also, we respectfully request that 90 days is still timely and ask that 60 days be changed to 90 days.

Recommendation:

- *(1) the next **regular** meeting of the governing body or committee (e.g., approving the minutes of the prior meeting **or presenting them for a first reading**), or (2) **90** days after the date of the meeting or written action.*

Line 10 Governing body review of Form 990.

This section permits the filer to answer 'yes' only if each member of the organization's governing body reviewed the form prior to filing with the IRS. Many organizations have large volunteer boards who have competing and busy schedules. It is often impractical to obtain the review of each individual of an entire board before submission.

Recommendation: Permit the filer to answer 'yes' if at a regular or special meeting of the board or at a meeting of the appropriate entity designated by the governing body (e.g. an executive committee) the governing board or designated committee reviewed the 990 prior to the filing with the IRS where a quorum was present and the review was duly recorded in the official minutes.

Section B Policies

Although the IRS acknowledges in part that some of the information that is required to be reported in this section is not required by law, the instructions must clearly state that the federal law does not require a conflict of interest or whistleblower policy. Even though we have both, some nonprofit organizations may perceive the requested information as being the law if it is not clearly stated

otherwise. It is a matter of integrity in government that the instructions be clear about what is required, what is not, and what is best practice.

Recommendation: Add a statement that the federal law does not require nonprofit organizations to have a conflict of interest or whistleblower policy but that it is recommended as a best practice.

Line 20 Location of books and records.

This section asks for the name and business address of the person who "possesses the books and records" of the organization. This question implies that one person possesses the books and records. It would be much clearer if the statement read as follows (see our recommendation below).

Recommendation: Change this section to read "Provide the name and address of the organization where the books and records are kept, or, if the books and records are not kept by the organization, provide the name of the person responsible and the address of the location where the books and records are kept."

Section C Disclosure/Appendix D Public inspection.

The IRS should clearly state that public disclosure requirements are adequately satisfied through GuideStar or a recognized entity that has a direct relationship with the IRS to provide 990s to the public. GuideStar actually provides even more information than the 990s.

Recommendation: Specifically reference "GuideStar or a recognized entity that has a direct relationship with the IRS to provide 990s to the public" in the public disclosure sections as having fully satisfied the public disclosure requirements.

Section Form 990 Core Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

PAR agrees with the American Society of Association Executives (ASAE) that the definition of "key employee" needs to be revised significantly. PAR is a member of ASAE and signed on to their letter joined by more than 300 other organizations. The letter points out that the definition of key employees will result in many organizations needlessly disclosing the salaries of department heads and other employees that do not have the authority or sufficient responsibilities to qualify as "key." PAR agrees with ASAE that the IRS can achieve its goal of rooting out excessive compensation and other forms of private inurement without casting such a wide net.

The definition of "key employee" in the draft instructions is

> *". . . a key employee is an employee of the organization (other than an officer, director, or trustee) who has responsibilities, powers or influence over the organization as a whole that is similar to those of officers, directors, or trustees; (2) manages a discrete segment or activity of the organization that represents 5% or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or (3) has or shares authority to control or determine 5% or more of the organization's capital expenditures,*

operating budget, or compensation for employees" [excludes any person whose reportable compensation from the organization and related organizations does not exceed $150,000.]

As we affirmed in ASAE's letter, there are three portions of this definition that are problematic:

1) *Discrete segment or activity*. Membership associations generally lack discrete departments, segments or activities. Departments tend to be somewhat smaller, and those employees who head them do not have clear autonomy with regard to budget, revenue or expenditures. Oftentimes, programs and departments overlap, with one department supporting another on one or more programs, with no one department "in control" of a program or activity.

2) *Manage does not equal control*. The term "manage" used in the draft definition of "key employee" appears to equal "control," which is not accurate. Management of a program, in our experience, does not confer significant autonomy or control over that program.

3) *The 5% threshold*. The IRS's attempt to establish a reporting cap or threshold for key employees is appreciated, but the suggestion that significant or substantial "control" or "authority" begins at a 5% level is a considerable stretch. There are numerous tax-related examples of "significant" or "substantial" control and none of them are as low as 5%.

Also, the only examples offered on this topic relate to universities and health care systems, both of which are completely different from many charitable or membership organizations. PAR requests additional examples that relate to a broader spectrum of nonprofits.

Recommendation: PAR joins with ASAE in recommending that the IRS revert to the "key employee" definition as set forth in the 2007 Form 990 instructions: *"any person having responsibilities, powers or influence similar to those of officers, directors, or trustees. The term includes the chief management and administrative officials of an organization . . .[for example] a chief financial officer and the officer in charge of the administration or program operations are both key employees if they have the authority to control the organization's activities, finances, or both."*

PAR also recommends that the threshold for reporting compensation be the same for key employees and for highest-compensate employees, <u>and set at $150,000 for both categories</u>. Currently it is $150,000 for key employees and $100,000 for the highest-compensated employees. This seems to unnecessarily complicate reporting.

Schedule C Political Campaign and Lobbying Activities.

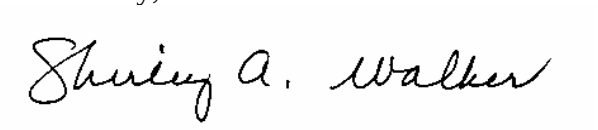
This section needs to state more clearly that an organization with a 501(h) election is only required to complete Part II-A and not also Part II-B. The way it is currently stated is not clear enough and could cause some organizations to complete both sections which would create confusion.

Recommendation: Add a statement that filers who have completed Part II-A do NOT complete Part II-B.

****

Thank you for considering our comments and recommendations. PAR is committed to accountability and transparency within the nonprofit sector, and commends the IRS for working to advance these goals. We hope comments from our sector will aid in your efforts to achieve these goals in a rational, cost-effective, and efficient manner.

Sincerely,



Shirley A. Walker
President and CEO

Pennsylvania Association of Resources
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1007 N. Front Street ❖ Harrisburg, PA ❖ 717.236.2374
www.par.net

From: Chuck McLean
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Draft Form 990 Instructions
Date: Friday, May 30, 2008 10:22:26 AM

I am writing to suggest that the threshold for reporting compensation under the new definition of key employee should be $100,000 rather than the $150,000 that the instructions suggest.

With the promulgation of Section 4958, the Service took an important step in regulating excessive executive compensation in the nonprofit sector. Many organizations consider the compensation information reported on Form 990 to be an important part of determining whether executive compensation is fair and reasonable. Raising the threshold from $50,000 to $100,000 already means that much useful compensation information that is currently available will disappear with the new form.

If the Service chooses not to reduce the threshold to $100,000, then great care should be taken to emphasize that a key employee not listed on Part VII because their compensation is less than $150,000 must still be listed if their compensation is greater than $100,000 and they are otherwise one of the five highest paid employees, other than officers, directors, trustees, and key employees **already listed**. I find many people are confused by this nuance.

Perhaps something like this: Example X. K, whose compensation is $125,000, qualifies as a key employee under the new definition. Because K's compensation does not exceed $150,000, K is not required to be listed on Part VII as a key employee. However, because K's compensation exceeds $100,000, and K is one of the five highest compensated employees other than officers, directors, trustees, and listed key employees, K's compensation must be reported.

Thank you for the opportunity to comment.

Chuck McLean
VP, Research and Data Quality
GuideStar (www.guidestar.org)

757.941.1436

From: Sarah Broome
To: *TE/GE-EO-F990-Revision;
Subject: Draft 2008 Form 990 Instructions, SE:T:EO in straight text and PDF forms
Date: Friday, May 30, 2008 10:55:45 AM
Attachments: 08may instruction comments.pdf
ATT1572186.txt

May 30, 2008

Internal Revenue Service

Draft 2008 Form 990 Instructions, SE:T:EO

1111 Constitution Avenue, NW

Washington, D.C. 20224

RE: Comments on Draft Form 990, Schedule H Instructions

On behalf of the North Carolina Hospital Association, thank you for the opportunity to comment on the draft instructions for the Form 990, Schedule H and accompanying worksheets. We appreciate the Service's openness to comments and the work done already to create a workable platform for reporting hospitals' community benefits.

Our comments seek clarification on items we know will be confusing for our hospitals to complete. If left as is, the instructions will result in varying interpretations and community benefit estimates. This will not only confuse the public, but reduce comparability across organizations.

We have organized our comments in the order in which they appear in the Schedule H draft instructions. In some cases, the comment relates to inconsistencies across sections. These are addressed in one comment, rather than repeated for each section.

Comment List

Issue:

Total Expenses for an EIN may include more than just hospitals. The denominator in Table I: Community Benefits percent is Total Expenses. Question 2 (on page 2 of the Instructions), the General Instructions on page 4, and the Specific Instructions about "Percent of total expense" on page 7 need more clarity. Although the reference is to expenses listed on the core 990 form (990.IX.25, col. A), it is not clear throughout that the denominator should:

· Not include "bad debt expense." Unless otherwise instructed, hospitals following FASB accounting standards will include bad debt expense in total expenses, because that is how their audited financial statements appear. Please make it clear on page 7 that any bad debt expense in 990.IX.25, col. A should be removed from the denominator before the percent is calculated.

· Include expenses for all entities reported. Some organizations have multiple entities operating under the same Employer Identification Number (EIN) that are not hospitals. For example, nursing facilities can be organized as a separate nursing home entity (not part of the hospital's EIN), a related, but separate nursing home operating within the same EIN as the hospital, or as a department on a floor of the hospital, fully absorbed into the hospital's structure. Many of these healthcare-related entities may provide community benefits and so are likely to contribute to amounts listed on Table 1. It is not clear under what circumstances the IRS would prefer these included in Table 1.

Recommended revision:

If the IRS intends to restrict Schedule H to those activities that occur within the licensed hospital facilities, then it should make that clear in the General Instructions and provide clear direction in the Specific Instructions that only the expenses for hospital facilities should be included in the "total expense" denominator. If the IRS intends that all community benefits provided by an EIN should be reported, then the General Instructions should replace the term "hospital" with "hospital and other EIN owned facilities." In this case the only addition to the Specific Instructions is make clear that "bad debt expense" should not be part of "total expense."

Issue:

Are questions about charity care policies exclusive with regards to Federal Poverty Guideline thresholds?
Please make clear the Specific Instructions for the questions in Part I.3 (on pages 5-6) whether a hospital with a FPG test along with an asset test (or any other kind of test) should check "No" or specify the FPG threshold. Some hospitals require patients to meet an income threshold and other thresholds (e.g. asset test) in order to qualify for charity care. It is not clear from the instructions how the IRS would like these hospitals to answer this set of questions.

Recommended revision:

Give an example of a hospital with such a policy and detail how these questions should be answered.

Issue:

Medicare in Part III, Section B is inconsistent with other sections. The term "Medicare allowable costs" in the hospital industry means costs as defined in CMS' Medicare cost reports. This does not include all Medicare services (e.g. Medicare Advantage; which CMS classifies as Medicare) and does not include all expenses related to care (e.g. costs of medical malpractice insurance are not included in the CMS definition of allowable costs). The losses on these services are real and increasing and all the costs necessary to provide these services should be included in a community benefit report. No other section of Schedule H restricts hospitals to report a subset of a community benefit category.

On a technical note, CMS Medicare cost reports are filed by Medicare Provider Number, which may not match the entity reported on the 990. If the IRS is intent on using the CMS cost reports, it will need to provide a detailed description of how hospitals should aggregate, disaggregate and estimate these costs (if they do not file a cost report).

Recommended revision:

Allow hospitals to estimate and report Medicare losses as they have

estimated and reported other losses on the community benefit report: By including all the related services and using the most accurate costing methodology available to them.

Issue:

Medicaid Net Patient Service Revenue definition needs clarity.
Line 8 of Worksheet 3 asks for "Net Patient Service Revenue" with a definition given on page 18 of the Specific Instructions. Hospitals that follow the FASB accounting standards will enter the amount as defined by those standards, which will include "bad debt expense." Also, because all accounting standards include a line item for "prior period adjustments" and remove an amount set aside in reserves for future adjustments, the amount reported could represent more or less of the actual revenues received for care given in the current year.

Recommended revision:

The definition should clearly state that "bad debt expenses" should not be included in Net Patient Service Revenue. The directions should either make clear to report only and all revenues received for current year services, or make it clear that hospitals are allowed to tie these revenues to their audited financials (with the exception of the exclusion of bad debt expenses).

Issue:

Medicaid losses should not be adjusted for Medicare GME.
The Specific Instructions for Worksheet 3, line 6, column (A) on page 18 ask for Medicare direct GME. Either this is a typographical error, or more description needs to be added about the reference to Medicare and not Medicaid.

Recommended revision:

Change "Medicare" to "Medicaid."

Issue:

Worksheet 5 (Education) expense section is too burdensome.
Beyond Medical Students and Interns, some hospitals will not be able to separate out expenses for these other programs.

Recommended revision:

Simplify Worksheet 5 by removing lines 3-5 so that the only programs listed are:

- Medical Students
- Interns, Residents and Fellows
- Other Students

Issue:

Clarifying instructions needed for Worksheet 6 (Subsidized Health Services) revenue section.
"Net Patient Service Revenue" is listed on line 4. This line has no instructions and so, as in Worksheet 3 (Medicaid), it does not define whether bad debt expense should be included, nor whether this amount may tie to audited financial statements (and therefore be adjusted for prior period adjustments and reserves) or must be restricted to all revenues for current year services provided.

Line 5 "Other revenue" is also not defined. It should be clarified on whether it too should not include grant revenues and what types of revenues should be included.

Recommended revision:

Define "Net patient service revenue" as the IRS chooses to define it in Worksheet 3, add instructions for "other revenue" that clarify not to include grant revenues and give examples of what to revenues to include.

Issue:

Cash and In-Kind Donations for items beyond line 7 should be reported.

The instructions clearly state that amounts reported in this category should be restricted to community benefit items as defined in the Table in Part 1, line 7. But there are many other community-related donations that hospitals provide. There is no place to record these amounts.

Recommended revision:

This is another area the IRS should consider as a possible future community benefit. A place should be made in Schedule H to allow hospitals to report these community benefits. Until a line can be added to Schedule H to report these, the instructions should make clear where hospitals should report these on schedule H. May they be included in Part II, Lines 1-9? (If so then this should be added to the instructions for these lines) Should hospitals describe them in Part VI? (If so, then it should be added as a question to Part VI).

Thank you for your consideration of these issues. We welcome questions about our comments and will be eager to assist further with this important matter.

Sincerely,

NORTH CAROLINA HOSPITAL ASSOCIATION

Sarah Broome, Ph.D.
Director of Economic Research

North Carolina Hospital Association
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Street Address: 2400 Weston Parkway, Cary, NC 27513
919-677-4137 (phone) 919-677-4200 (fax)

http://www.ncha.org

From: Donna Shelton
To: *TE/GE-EO-F990-Revision;
Subject: N.A.C.H. comments on FORM 990 draft instructions
Date: Friday, May 30, 2008 10:58:20 AM
Attachments: nach comments on schedule H.doc

Attached please find comments from the National Association of Children's Hospitals on the draft instructions for the new Form 990 Schedule H. Please let me answer any questions.

Donna S. Shelton
Director, Child Health Policy Research and Analytics
National Association of Children's Hospitals and Related Institutions
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MAIN: 703.684.1355
FAX: 703.684.1589

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N • A • C • H •

May 30, 2008

By electronic filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on Form 990 Schedule H Instructions

I am writing on behalf of the National Association of Children's Hospitals (N.A.C.H.), which represents 140 tax-exempt children's hospitals across the country, including acute care children's hospitals that serve all children and specialty children's hospitals that serve children with chronic conditions.

N.A.C.H. is dedicated to assisting its member hospitals in the fulfillment of their missions of providing clinical care, training, research and public health advocacy to benefit all of the children in their communities. The Association is the public policy affiliate of the National Association of Children's Hospitals and Related Institutions (NACHRI), which serves more than 200 institutions nationwide. N.A.C.H. members include 60 tax-exempt independent children's hospitals that operate under their own employer identification number (EIN) and 80 children's hospitals that operate under the EIN of a larger, tax-exempt medical center or system of which they are part.

We appreciate very much the Internal Revenue Service's (IRS) efforts to engage the hospital community in a dialogue to improve reporting on tax-exempt hospitals' community benefits.

Tax-exempt children's hospitals are the foundation of health care for all children in this country. They represent less than five percent of all hospitals, but they provide 40 percent of inpatient care for all children and virtually all of the inpatient care for children with serious medical conditions. They train most of the nation's pediatric workforce, and they are responsible for most of the nation's pediatric research. They are major partners with state and local governments in the advancement of public health for children. The ability of the children's hospitals to fulfill these missions is critically important, because the health care needs of children are distinctly different from those of adults. Children's hospitals are focused on children's health care and well being and without these hospitals

children would not have access to care that is tailored to their unique needs.

We are aware that the IRS is receiving comments from several national hospital associations that address the full breadth of issues raised by the proposed instructions for the Form 990 and related schedules for hospitals, including children's hospitals, and we are supportive of many of those efforts. However, our own comments address only those aspects of the instructions for IRS Form 990 Schedule H that are of greatest importance to children's hospitals. While the changes to the Form 990 and related schedules affect both independent children's hospitals and children's hospitals that operate under the EIN of larger tax-exempt medical centers, our comments focus specifically on the 60 independent children's hospitals operating under their own EIN among our member hospitals.

1. Prior year settlements

Issue: Organizations periodically receive Medicaid and public-program revenue that is associated with services and cost reports from prior years. This occurs because it takes time for Medicaid (and other program) cost reports to be reviewed, audited, and finalized by state and/or federal government. Organizations like children's hospitals have the right to appeal adjustments a state may make to submitted cost reports that affect Medicaid revenue. It can take years for appeals to be resolved. If appeals are successful, an organization can receive substantial revenue in a current fiscal year that relates to services provided in one or more prior fiscal periods. This is an issue that disproportionately affects children's hospitals because they are uniquely dependent on Medicaid services compared to adult facilities.

This phenomenon is an issue for Schedule H reporting because the draft instructions now state:

> Organizations are to report both gross and net community benefit expense. "Net community benefit expense" is the gross expense of the activity less direct offsetting revenue. If the calculated amount is less than zero, report such amount in Column (e) as a negative number.

A large negative number in Column (e) can lead to negative community benefit numbers in total. In other words, if revenue received from prior-year settlements is included in "direct offsetting revenue", it can result in a negative "Net community benefit expense" for a given tax year. This would be true of an organization that provided substantial amounts of Medicaid services in the tax year, with no guarantee that the prior year revenue would be available in that year.

The revenue thus can reduce an organization's total "Net community benefit expense" dramatically – to the point where the organization's total "Net community benefit

expense" is minimal or even negative.

Under GAAP, organizations would report the prior-year revenue as revenue in the year it was received or when its collectability was reasonable assured. Organizations do not re-state prior year financial statements to record the prior-year revenue in the period when the associated services were provided.

The Schedule H instructions should provide guidance to organizations regarding how to account for prior year revenue – otherwise Part I, Line 7 will be completed inconsistently and will be open to misinterpretation.

Recommendation: N.A.C.H. recommends that the instructions state that organizations follow GAAP accounting for prior-year revenue and report the amounts in the year the revenue was collected or reasonably assured, but encourage or instruct organizations to disclose in Part VI amounts that are material. A line can be added to Worksheet 3 and labeled "prior year settlements" to assure an audit trail for such amounts is available.

2. <u>There are many examples of Community Building activities that provide substantial community benefit.</u>

Issue: Community Building activities are to be reported in Part II of Schedule H and not in Part I. The instructions for Part II state that:

> An organization that reports information in this section must describe, in Part VI, question 5, how its community building activities provide community benefit and promote the health of the communities it serves.

Recommendation: N.A.C.H. wants to reiterate that it supports the inclusion of community building activities as a part of community benefit reporting. Independent children's hospitals make fundamental contributions to the public health of their communities. They provide services that go well beyond medical treatment.

Children's hospitals operate primary and preventive care clinics as well as conduct immunization campaigns. These activities would be counted in Part I of Schedule H. They also partner with others on injury prevention efforts, child abuse prevention and treatment, obesity prevention and treatment and other public health initiatives, most of which are provided with limited or no reimbursement to the hospitals. However, these activities would be reported in Part II of Schedule H. For example:

- Injuries are the leading cause of death among children and a major cause of admissions of children to emergency departments and inpatient care. In their roles as advocates for the public health of all children, children's hospitals around the country are extensively involved in community efforts to reduce the incidence

of injury. They promote the construction of safe play grounds, distribute car seats and educate drivers how to install them safely, teach pedestrian safety to children in school, promote bicycle helmet use and operate poison control centers among other activities.

- Children's hospitals are the frontlines of child abuse prevention and treatment. For example, they are spreading the message—never shake a baby—and expanding efforts to help families prevent child maltreatment and provide nurturing environments for their children. To help individuals, organizations and communities, children's hospitals have developed parent education programs and community partnerships to raise public awareness about child abuse and neglect. Programs are also designed to support families and prepare both professionals and the public to safeguard children from all forms of child abuse and neglect.

N.A.C.H. encourages the IRS to review the Schedule H responses submitted by our members and to consider allowing organizations to report community building in Part I and not in Part II of Schedule H for tax years 2009 and beyond.

Recommendation: Additionally, N.A.C.H. encourages the expansion of the "workforce development" category of community building activities to include the recruitment of physicians to meet an identified community need.

3. Donations that support community building activities should be included in Part II.

Issue: Schedule H, Part I, Line 7 includes row I where organizations are to report cash and in-kind donations to community groups. The draft instructions for Worksheet 8 state that:

> "Cash and in-kind contributions" means contributions made by the organization to health care organizations and other community groups that are restricted to one or more of the community benefit activities described in the Table in Part I, line 7 (or the Worksheets thereto).
>
> Do not report (a) cash or in-kind contributions contributed by employees, or emergency funds provided by the organization to the organization's employees; (b) loans, advances, or contributions to the capital of another organization; or (c) unrestricted grants or gifts to another organization that may, at the discretion of the grantee organization, be used other than to provide the type of community benefit described in the Table in Part 1, line 7.

Without a clarification in the instructions, it is likely that organizations donating cash or in-kind resources to organizations that provide community building activities (e.g.

Habitat for Humanity) will neglect to report those donations in Part II of Schedule H.

Recommendation: The instructions for Column (c) of the table in Part I of Schedule H should be amended to indicate that "Total Community Benefit Expense" also should include the financial value of cash and in-kind donations. The instructions to Part II then should indicate that donations to organizations that provide community building should be reported in Part II of Schedule H.

4. Qualifying research should not be limited only to those studies funded by tax-exempt or government sources, but to all studies that produce generalizable knowledge.

Issue: The instructions to Schedule H define "research" as follows:

> "Research" means any study or investigation that receives funding from a tax-exempt or governmental entity of which the goal is to generate generalizable knowledge that is made available to the public, such as …

There are circumstances in which industry-sponsored research generates generalizable knowledge and public benefit. For example, N.A.C.H. members encourage drug companies and device manufacturers to research and develop products for the pediatric market. This market is sometimes viewed by industry as too small to invest its research and development budgets to bring products to market. N.A.C.H. members encourage industry to invest in products and technologies for children, and contribute their own funds to assure these advances are made available.

Recommendation: The phrase *that receives funding from a tax-exempt or governmental entity* should be stricken from the definition of "research" that appears twice in the draft Schedule H instructions.

5. The instructions are unclear regarding whether research funded by the organization's own resources would be included in the accounting of community benefit activities in Schedule H.

Recommendation: If the IRS does not strike the phrase *that receives funding from a tax-exempt or governmental entity* from the definition of "research", it should add a phrase to the instructions indicating that studies funded by the organization's own tax-exempt resources would be included in this category of community benefit.

6. The instructions would benefit from further clarification regarding "what is a grant"

Issue: The draft instructions define "direct offsetting revenue" as follows:

> "direct offsetting revenue" means revenue from the activity during the year that offsets the total community benefit expense of that activity, as calculated on the worksheets for each line item. "Direct offsetting revenue" includes any revenue generated by the activity or program, such as reimbursement for services provided to program patients. Direct offsetting revenue does not include restricted or unrestricted grants or contributions that the organization uses to provide community benefit.

Because IRS is indicating that for Tax Year 2008 "direct offsetting revenue" does not include restricted or unrestricted grants, N.A.C.H. believes that the instructions should define "what is a grant" for purposes of Schedule H community benefit measurement. Without a definition, it is possible for organizations to exclude certain types of revenue inconsistently.

Recommendation: N.A.C.H. offers the following definition to be incorporated into the instructions.

Grants are funds given to state and local governments and tax-exempt organizations to fund projects and programmatic activities. Granting entities include: foundations, corporations, government (federal, state and local), small business and individuals. Most grants are given (or restricted to be used) for a specific purpose and require some form of compliance, reporting and evaluation. The grantmaking process begins with an applicant submitting a proposal to a potential funder, either on the applicant's own initiative or in response to a Request for Proposals (RFP) from the funder.

Characteristics of Grants:

1. Organizations submit applications or proposals to funders
2. They are generally restricted to specific projects or programs; however, in some cases grants may be unrestricted and used at the grantee's discretion
3. Grants are generally not considered or accounted for by hospitals as patient revenue
4. Grants typically are defined or labeled by the funding organization as a grant
5. Unlike patient revenue or other types of resources, grants have a designated period of performance
6. Grants have a specific budget and an obligation to account for costs specifically funded by the grant
7. Grants may include an obligation to return unspent funds
8. Grants can be lost if the organization does not perform or decides to stop the program

Examples:

Federal Grants

1. Emergency Medical Services for Children (HRSA)
2. Grants for Injury Control Research Centers (CDC)
3. NIH Research Grants

Private Foundations
1. Robert Wood Johnson Foundation
2. Howard Hughes Medical Institute
3. Arthur Vining Davis Foundations

Corporate Foundations
1. Allstate Foundation
2. Bank of America Charitable Foundation
3. Mattel Children's Foundation

Examples that are not Grants:
1. Medicaid DSH funds
2. Medicare direct or indirect medical education funds
3. State or local indigent care funds
4. Other funds that vary directly with patient volume and thus are more appropriately viewed as patient revenue

On the basis of the above definition, federal Children's Hospital GME (CHGME) funding should be considered a grant, and thus not included in "direct offsetting revenue". CHGME is defined by the Office of Management and Budget as a block/formulary grant requiring annual application by eligible hospitals, with annual performance reporting requirements.

7. <u>"Splitting" IME and health professions reimbursement out of other payments received from states under their Medicaid programs</u>

Issue: In some states, children's hospitals receive reimbursement rates from Medicaid and other public programs that do not separately identify or differentiate Indirect Medical Education (IME) reimbursement, Direct Medical Education (DGME) and other amounts. The payment rates thus are "all inclusive". This is particularly the case in states where large numbers of children are enrolled in Medicaid managed care programs – and where managed care plans provide our hospitals with a negotiated, overall per-diem or per-case reimbursement rate. This makes it difficult to exclude from Worksheet 3 DGME revenue and education costs (because those are to be reported in Worksheet 5) and to exclude IME revenue as well.

Recommendation: The instructions should indicate that organizations unable to segregate IME and DGME reimbursement amounts from other revenue received from Medicaid and other means tested public programs are able to use any reasonable basis for

estimating these amounts or are able to report them either on Worksheet 3 or Worksheet 5 (lines 7b and 7f in the Part I table).

8. Allocating Medicaid DSH funds to charity care or Medicaid shortfalls

Issue: The instructions seek comment on how organizations should allocate Medicaid DSH revenue and provider taxes or fees, stating:

> The IRS seeks comments on how filing organizations should report the cost of Medicaid and provider taxes (Worksheet 1, line 4) and revenue from uncompensated care pools or programs, including Medicaid Disproportionate Share Hospital ("DSH") funds (Worksheet 1, line 6), as costs and revenues associated with charity care (Worksheet 1) or with Medicaid and other means tested government programs (Worksheet 3). The Service is contemplating use of either a primary purpose requirement (the costs and revenues would be reported on the worksheet that best reflects the primary purpose of those payments in the organization's home state—either to offset charity care or Medicaid) or a proportionality requirement (the costs and revenue must be split between Worksheets 1 and 3 according to how the organization's home state allocates DSH payments and other uncompensated care pool payments made to hospitals. The draft instructions adopt the primary purpose test.

Recommendation: The instructions should allow organizations to split these resources between Worksheets 1 and 3 if in the organization's home state the purpose of the payments is to support both charity care and Medicaid shortfalls. There are states where the intent of DSH resources either (a) is not clearly stated by the legislature or Medicaid state plan or (b) is to support both types of hospital losses. The instructions could state that if the primary purpose has been established by state policy, that purpose should be reflected in the distribution of the payments either to Worksheet 1 or to Worksheet 3. However, if the purpose is unclear or to support both categories of expense, then organizations can use any reasonable method to distribute the funds to Worksheets 1 or 3. In either case, the revenues and taxes/fees in question would be fully reported in the Part I table.

9. Joint Ventures and the calculation of total expenses

Issue: The IRS also seeks comments regarding the calculation of total expense. The instructions indicate that the Part I table is to include community benefit provided by taxable joint ventures in which the organization participates. The numerator of the "percent of expense" calculation thus will include a proportion of community benefit provided by joint ventures, with the proportion based on the organization's ownership interest in each joint venture. The draft instructions are silent as to how the denominator of the "percent of expense" calculation "total expense" should reflect the inclusion of

joint venture community benefits. The April 7 draft states:

> The IRS requests comments regarding the calculation of total expenses to make certain the denominator includes the organization's share of total expenses of all joint ventures, so that the numerator and the denominator consistently treat items attributable to such joint ventures.

Recommendation: N.A.C.H. recommends the instructions state that "total expense" for purposes of the Part I and Part II tables include the organization's share of total expenses of all joint ventures if community benefits and community building activities from those joint ventures also are included in Schedule H.

10. Physician clinics, ancillary services and skilled nursing facilities should not be excluded from consideration as "subsidized health services".

Issue: The IRS also seeks comments regarding whether certain activities and programs should be includable as subsidized health services. The April 7 draft states:

> The IRS requests comments on whether, and if so under what circumstances, subsidized health services should include any portion of costs to conduct a physician clinic or skilled nursing facility.

Recommendation: N.A.C.H. recommends that if physician clinics, ancillary services or skilled nursing facility services meet the definition of "subsidized health services" included in the draft instructions, costs for those activities or programs should be included in Part I, line 7 of Schedule H. As currently written, for example, a mobile diagnostic unit servicing underserved or uninsured communities at a loss would not be able to claim these services as a community benefit.

11. It should not be necessary for organizations to split qualifying health professions education costs between those for the organization's own staff and those for community members.

Issue: The instructions state the following:

> "Health professions education" means educational programs that result in a degree, certificate, or training that is necessary to be licensed to practice as a health professional, as required by state law; or continuing education that is necessary to retain state license or certification by a board in the individual's health profession specialty. It does not include education or training programs available only to the organization's employees and medical staff or scholarships provided to those individuals. If education and training is not restricted to the organization's employees and medical staff, use a reasonable allocation to report

> only the expenses related to providing the education or training to persons who are not employees of the organization or not on the organization's medical staff.

N.A.C.H. does not agree with the requirement to report only the expenses related to providing education or training to persons who are not employees of the organization or not on the organization's medical staff. If education programs are open to community participants, the entire program cost should be counted in Worksheet 5 net of any associated fees or revenues collected. Hospital staffs experience turnover, as employees and medical staff members leave for other opportunities. These individuals take the benefits of their educational experiences with them to new settings. Likewise, community participants in our education programs may decide to become our employees or medical staff members. If open to community participants, our education programs provide community benefit and the entire program cost thus should be counted.

Recommendation: N.A.C.H. recommends striking the last sentence of the above paragraph in the instructions, and indicating that health professions education does not include *in-service* education or *continuing medical education* training programs available only to the organization's employees and medical staff.

12. <u>The requirement not to count education for one's own staff is a problem for graduate medical education activities</u>

Issue: If IRS does not strike the sentence mentioned above, the definition in the instructions of health professions education may be interpreted as excluding components of our health professions education programs that should be considered community benefit. Interns and residents, for example, generally are employees of teaching hospitals in the United States. Teaching hospitals provide these physicians in training with salaries and benefits. The instructions thus suggest that hospitals should not report graduate medical education costs for these staff members in Worksheet 5.

Recommendation: N.A.C.H. recommends that the instructions indicate that education costs for interns and residents who are hospital staff are to be included in Worksheet 5 and in Part I of Schedule H.

13. <u>The adjustment to remove health professions education cost from Worksheet 3 is unnecessary</u>

Issue: Worksheet 3 now includes line 6 – which is designed to remove health professions education costs from the cost of Medicaid and other means tested government programs. We note that the instruction for this line has a typographical error "Medicare" should instead be "Medicaid". However, this line should not be included in Worksheet 3 at all. The ratio of patient care cost to charges in line 2 of Worksheet 3 already excludes health professions education costs because those costs are adjusted out

of the ratio in Worksheet 2. As a result, line 6 in Worksheet 3 adjusts education costs out twice.

Some organizations will include cost in line 3 of Worksheet 3 based on their cost accounting systems or other methods that do not rely on the ratio of patient care cost to charges from Worksheet 2. Those organizations should be guided in the instructions simply to exclude any health professions education costs from line 3.

Recommendation: Eliminate line 6 of Worksheet 3 and include a sentence in the instructions for Worksheet 3 indicating that organizations relying on a cost accounting method other than the ratio of patient care cost to charges from Worksheet 2 should exclude any health professions education costs that otherwise are reported in Worksheet 5.

14. Facilities definition is too broad

Issue: The instructions define facility as

> For purposes of Schedule H, Part V, a "facility" is defined to include a campus (or component thereof), building, structure, or other physical location or address at which the organization provides medical or hospital care, including a hospital, outpatient facility, surgery center, urgent care clinic, or rehabilitation facility, whether operated directly by the filing organization or indirectly through a disregarded entity or joint venture taxed as a partnership. The organization must separately list in Part V each facility to which any portion of the information reported on Schedule H is attributed.

Because most children's hospitals provide services in a wide range of settings, such a broad definition will be overly burdensome for reporting without providing useful additional information.

Recommendation: N.A.C.H. recommends that the definition be amended to include only those facilities subject to state licensure requirements.

In closing, we respectfully request that these comments be considered carefully and appropriate changes be made to the Form 990 Schedule H instructions. We hope our comments and recommended changes will help improve the usefulness of the Form. Please contact Donna Shelton (dshelton@nachri.org or 703/797-620) on the NACHRI staff if you have any questions regarding our comments. Thank you very much for your consideration of the N.A.C.H. comments.

Sincerely,

Lawrence B. McAndrews

President and CEO
N.A.C.H.

From:	Rita Heika
To:	*TE/GE-EO-F990-Revision;
cc:	Melissa Speck; Paula Bussard; Tina Latin-True;
Subject:	Comments on Draft Form 990, Schedule H and Selected OtherInstructions
Date:	Friday, May 30, 2008 11:09:38 AM
Attachments:	IRS 990 directions comment ltr.doc

See the attached 990 instruction comment letter from the Hospital and Healthsystem Association of Pennsylvania.

Rita Heika

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By Electronic Filing

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

RE: COMMENTS ON DRAFT FORM 990, SCHEDULE H, AND SELECTED OTHER INSTRUCTIONS

On behalf of Pennsylvania's nearly 250 member hospitals and health systems, The Hospital & Healthsystem Association of Pennsylvania (HAP), welcomes the opportunity to submit comments on the draft instructions for Form 990, Schedule H for Hospitals, and selected other sections of the draft instructions.

We appreciate the time and effort that the Internal Revenue Service (IRS or Service) has put into the draft instructions, and in particular those for Schedule H. We also want to recognize the Service's willingness to address questions from the hospital community.

As with the form itself, the instructions need to encompass the Service's original goals, and we encourage the Service to continue to improve the draft instructions with these goals in mind:

- **Enhancing transparency**
- **Promoting compliance**
- **Minimizing the burden**

W e have identified areas of concern or clarification on the recently released draft instructions for the Form 990 and accompanying schedules.

Our comments focus on Schedule H, but also raise issues with several aspects of the draft instructions for Form 990, Schedule J, Compensation Information, and Schedule K, Supplemental Information on Tax-Exempt Bonds.

Schedule H

We recognize and appreciate the Service's efforts to minimize the considerable burden on hospitals associated with the new form and schedules, particularly Schedule H. It is critical that there be a balanced approach related to the level of information to be collected and the relevancy of such information. With that in mind, there are some areas where the instructions need to be improved to further minimize burden and achieve greater clarity and consistency.

Part I Charity Care and Certain Other Community Benefits

It is important to recognize that many hospital corporate structures include multiple corporations, most of which provide some community benefit activities in addition to those conducted directly by the hospital. The draft instructions provide that Schedule H should aggregate information from disregarded entities and joint ventures, but does not provide a mechanism to capture these

important community benefit activities from related corporations that operate within the hospital system or holding company structure. We urge the IRS to clarify in the final instructions how such community benefit activities should be reported, since activity that would have been conducted by the hospital, but for the corporate structure, should be reportable activity.

While Part VI permits an organization that is part of an affiliated health care system to describe the respective roles of the organization and its affiliates in promoting the health of the communities served, we do not believe this question adequately and appropriately addresses the issue presented.

To calculate amounts to be included in the charity care and other community benefit table, the draft instructions provide that organizations may use the worksheets provided with the instructions or other equivalent documentation that substantiates the information reported consistent with the methodology required in the worksheets. It is important to recognize that hospitals have developed or licensed software programs to capture information in connection with various state law community benefit reporting requirements. Such systems need to be recognized and considered as "other equivalent documentation," so as to avoid duplication of effort or a greater burden in capturing equivalent information on the worksheets.

Grants

We commend the IRS for its treatment of grants restricted for community benefit activities. That determination will encourage hospitals to seek such grants to support programs and services in their community that otherwise might not have been available. The draft instructions do not require grants (whether restricted or not) that an organization receives and uses to provide community benefit to be counted as "Direct offsetting revenue" in computing "Net community benefit expense" on the charity care and other community benefit table. The draft instructions also provide that an organization may not report on Line 7(i) (Cash and in-kind contributions to community groups) any contributions that were funded in whole or in part by a restricted grant from a related organization. Moreover, the draft instructions provide that unrestricted grants or gifts to another organization that may, at the grantee organization's discretion, be used other than to provide community benefit may not be reported on Line 7(i). Thus, it appears that if an organization makes a grant to a related organization, including to a foundation or other tax-exempt organization that is not required to file Schedule H, the organization should include such grant in Line 7(i), as long as it is restricted to be used to provide community benefit and was not funded by a restricted grant in the first place. This could also include a grant that was subsequently used by the related organization to fund in whole or in part a grant to another organization. Although this position can be discerned from the draft instructions as written, HAP believes that the IRS should clarify this point in the final instructions.

Medicaid Provider Taxes

The Service specifically has requested comments on how filing organizations should report the cost of Medicaid and provider taxes (Worksheet 1, Line 4) and revenue from uncompensated care pools or programs, including Medicaid Disproportionate Share Hospital (DSH) funds (Worksheet 1, Line 6), as costs and revenues associated with charity care (Worksheet 1) or with Medicaid and other means tested government programs (Worksheet 3).

The wording in the instructions for Worksheet 1, Line 4, is confusing, and results in a narrower-than-intended interpretation of what hospitals should report. We suggest the following changes:

Line 4*:* Enter the amount of Medicaid provider taxes paid by the organization, if payments received from an uncompensated care pool or Medicaid Disproportionate Share Hospital (DSH) program in the organization's home state are intended primarily to offset the cost of charity care. If such payments are primarily intended to offset the cost of Medicaid services, then report this amount in Worksheet 3, Line 4(A). "Medicaid provider taxes," sometimes termed a "fee" or "assessment," or "health care-related tax," means amounts paid or transferred by the organization to one or more states as a mechanism to generate federal Medicaid funds.

Note that we have suggested that the Service delete the last sentence because it does not add to the definition and creates the false impression that provider tax programs uniformly benefit individual providers.

On Worksheet 1, Line 4 and Worksheet 3, Line 4, delete the word "or."

Definition of Subsidized Services

Hospitals subsidize a range of services to meet the specific needs of their communities. These needs differ greatly based on demographic, economic, and geographic factors. For example, an inner-city hospital experiencing a high number of emergency department visits for uncontrolled asthma may establish a clinic offering free or reduced-fee services for children with asthma. A small rural hospital may need to subsidize physician on-call coverage to ensure the community has 24/7 access to emergency services.

The criteria that the IRS provides for "subsidized services" are clear and comprehensive and the examples cover a range of common service offerings. However, it is important to recognize that there are unique circumstances that individual communities face, and do not feel that specific types of services should be excluded from the definition of subsidized services provided that provided that they meet the criteria outlined. These include physician clinic services, skilled nursing services and ancillary services.

Part II Community Building Activities

Under Line 8 (Workforce development), the IRS should broaden the category to include other circumstances under which physician recruitment can be reported, such as the absence or shortage of a particular physician specialty. To that end, the IRS could amend the existing language to add after "underserved": "or in other circumstances where there is an identified community need for a particular type of physician(s)."

Part III Bad Debt, Medicare & Collection Practices

We urge the IRS to include language the following language in the instructions themselves, explicitly recognizing, that this section permits:

- important and uniform reporting of bad debt expense information and an explanation of why certain portions of bad debt should be considered community benefit; and
- important information regarding Medicare revenues and costs, shortfalls or surpluses and an explanation of why certain portions should be treated as community benefit.

Section A

Line 4 requires an organization to provide the text of the footnote to the organization's financial statements that describes bad debt expense. The draft instructions further provide that footnotes related to "accounts receivable," "allowance for doubtful accounts," or similar designations may satisfy this reporting requirement. We understand that many health care organizations' financial statements do not contain footnotes relating to bad debt expense or any noted or similar designations. HAP suggests that the IRS include language in the draft instructions to this question to clarify that, if this is the case, organizations are not required to create footnotes in financial statements to satisfy this question.

Section B

Under Section B-Medicare, Line 8, the IRS has not provided adequate guidance to hospitals about the type of explanation it would find useful in better understanding which portions of Medicare underpayments constitute community benefit. To that end, we recommend that the IRS include the following language, into the instructions:

An organization's rationale may have any reasonable basis, including the amount of the shortfall that might otherwise have been used to support the programs included in Parts I or II, an estimate of the income range of the organization's Medicare patients, an estimate of the number of Medicare patients also eligible for the Medicaid program (dual eligibles), or whether the organization reports the amount of Medicare shortfall to any state government authority identified in Part IV, Line 8, or any other government authority.

As the IRS is aware, this is an area in which hospitals have been provided little guidance in the past and in which guidance, like that suggested above, would be quite useful.

Under the introductory paragraph for Part III on page 9, we suggest that the IRS add the word "likely" after the word "who" in the first sentence to be consistent with the phrasing on the following page.

We urge the IRS to allow hospitals the same options for accounting for Medicare costs as are available for other parts of Schedule H. The current instructions are confusing and provide conflicting guidance. For example:

- By using the word "allowable cost" in Line 5, the IRS implies that hospitals should use Medicare cost reporting rules and accounting standards to calculate the Medicare shortfall. The inclusion of multiple choices on Line 8, however, implies that hospitals still have the ability to use the most accurate method available to them as they do elsewhere on Schedule H. The instructions provide no guidance on what those checkboxes mean.

- Line 5 of Part III says to "Enter total revenue received from Medicare (including DSH and IME)," and the instructions provide further guidance on what revenues to include or exclude. One item that is specifically *included* is Part B physician services. On the worksheet supporting Line 6, the IRS says to take Medicare allowable costs (from the Medicare Cost Report). The Medicare cost report does not account for the revenues and costs of Part B physician services because they are paid under a different payment system. Thus the IRS is including Part B physician services in revenues, but excluding them from costs.

Medicare cost report accounting is very different from Generally Accepted Accounting Principles (GAAP) standards and, as such, will be very different from what hospitals determine is the most accurate costing method to use elsewhere on Schedule H. The Medicare cost report is designed only to produce cost estimates for a specific subset of Medicare programs. It excludes parts of the Medicare program that may contribute to Medicare gains or losses for the hospital like Part B physician services, as mentioned above, and the revenues and costs associated with Medicare Advantage patients. Worksheet 3 specifically asks hospitals to include the revenues and costs associated with Medicaid managed care patients. To be consistent with the calculations on other parts of the form and provide a full accounting with respect to Medicare, Section B should capture the costs and revenues associated with *all* Medicare services and patients using the most accurate approach available.

Part V Facility Information

In the draft instructions, the IRS has proposed to adopt a definition of "facility" that is too broad. Under this broad definition, large health care systems that operate numerous hospitals will be required to report every building, structure, clinic, etc. Such a reporting requirement will amount to dozens of pages of information being submitted to satisfy this question. Thus, for large complex health care systems, such a broad definition would require details that are not meaningful to understanding the hospital. HAP urges the IRS to provide further clarification on the definition of "facility" as "an entity that is licensed and/or certified as a hospital."

FORM 990 – KEY EMPLOYEE

Although the IRS has made many improvements to the Form 990 instructions, some concerns remain. Of immediate concern is the breadth of the definition of "key employee." We have consistently advocated for a much more focused definition that would reduce the burden of providing this information. Hospitals and hospital systems can be large and complex organizations, and the new definition does too little to mitigate the burden associated with this new reporting requirement. We note that even within our own organization, the revised definition could capture Human Resource executives who have virtually no "responsibilities, powers or influence over the organization … that is similar to those of officers, directors or trustees." The same would be true for hospitals.

We also agree with the American Society of Association Executives (ASAE) that the definition of "key employee," even as revised by the draft instructions, remains too broad and sweeping and should be further refined. Both the percentage threshold (now 5 percent) and the control standard (management) need to be revised; a threshold well above 5 percent and a tighter

control standard coupled with an upper limit on the number of employees to be reported – preferably limited to three – should replace the current definition. If experience with the new form ultimately suggests a more expansive definition, the Service should revise it at that time.

SCHEDULE J – DEFERRED COMPENSATION

The draft instructions to Schedule J require deferred compensation to be reported in the year earned, whether or not funded, vested or subject to substantial forfeiture, *and* in the year paid. Although final Schedule J includes column (F) for the reporting of amounts that were also reported in another year, HAP believes that this addition does not address the unfairness and misperception associated with reporting compensation that is not yet considered to be income to the recipient. HAP urges the IRS to require that amounts of unpaid, unvested deferred compensation be reported only in the year the compensation is paid to the recipient.

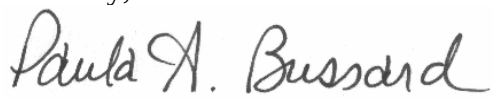
SCHEDULE K – SUPPLEMENTAL INFORMATION ON TAX-EXEMPT BONDS

The draft instructions to Schedule K require organizations to complete the Schedule for each outstanding tax-exempt bond that both had an outstanding principal amount in excess of $100,000 as of the last day of the tax year and was issued after December 31, 2002. The draft instructions further provide that refundings after December 31, 2002 of pre-2003 issues must be treated as post-2002 issues and reported on Schedule K. HAP urges the IRS to clarify in the instructions that such reporting does not include information on expenditure and investment of proceeds or uses of bond-financed facilities occurring prior to 2003.

We appreciate the opportunity to submit our comment on the draft instructions for the core Form 990 and related schedules, and thank you in advance for consideration of our comments and recommendations.

Should you have any questions regarding our comments please contact Tina Latin-True, vice president and controller, HAP, at (717) 561-5311.

Sincerely,



PAULA A. BUSSARD
Senior Vice President
Regulatory Services

From: Jessica Curtis
To: *TE/GE-EO-F990-Revision;
Subject: Comments to the IRS Form 990 Draft Instructions
Date: Friday, May 30, 2008 11:33:17 AM
Attachments: Schedule H Instructions Comments FINAL 5.30.08.doc

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Dear Sir/Madam:

We are a national advocacy organization working to build consumer and community participation in the shaping of our health care system to ensure quality, affordable health care for all. Please accept our comments on the IRS Draft Instructions which, due to our health care focus, are limited to Schedule H.

On behalf of the consumer advocates from 26 states who joined this letter, we thank you for the opportunity to comment on these important Instructions.

Sincerely,

Jessica L. Curtis

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May 30, 2008

VIA ELECRONIC MAIL AND FIRST-CLASS MAIL

IRS
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., NW.
Washington, DC 20224

Re: 2008 Schedule H (Form 990) Instructions

Dear Sir/Madam:

Thank you for the opportunity to offer comments on the draft set of instructions to the recently revised IRS Tax Form 990 (hereinafter "the Instructions").

The undersigned organizations represent local, state and national consumer organizations that are working to improve access to health care services for uninsured and underinsured patients across the country. We have worked to promote improved financial assistance and community benefit programs at individual hospitals as well as to create standards for these programs at the local, state and federal levels. Because of our focus on health care issues, we are limiting our comments to the Instructions pertaining to Schedule H and its related worksheets.

We applaud the Service for its efforts to increase transparency among tax-exempt hospitals. For too long, regulatory standards for nonprofit hospital community benefit and financial assistance performance have been vague. Although significant numbers of hospitals do provide meaningful amounts of financial assistance to their patients and implement community benefit policies sensitive to community needs, too many hospitals fail to do so. We believe Schedule H will provide important information that will promote an improved dialogue between tax-exempt hospitals and consumers in order to better address the health care needs of the communities served by the hospitals.

First, we support and applaud the Service's repeated and unequivocal prohibition against including bad debt in any community benefit calculation. We believe that this will rightly encourage hospitals to improve their "front-end" operations, i.e. those that seek to qualify patients for public programs or the hospital's own financial assistance programs. Second, we agree with the Service's requirement that certain activities reported in

Schedule H must be "*responsive to an identified community need*." Third, we concur with the general requirement that reported activities must "*promote the health of the community the organization serves.*" These three approaches go a long way toward increasing transparency and promoting greater clarity and uniformity in reporting. We believe, however, that the modifications recommended in this letter will greatly help to further these goals.

Definition of Charity Care (Instructions, p. 5)

As drafted, the Instructions define charity care as "free or discounted health services provided to persons who meet the organization's criteria for financial assistance and are thereby deemed unable to pay for all or a portion of the services." Allowing hospitals to report charity care based on their own criteria allows for wide variation among reporting hospitals. With such a wide range of approaches, the problem identified in the IRS Hospital Compliance Interim Report, which found that hospitals have an enormous variety of approaches in defining uncompensated care, only continues. A preferable approach would be to set a standard for charity care that a) establishes the types of charity care a nonprofit hospital must offer and b) includes a process for determining eligibility that is uniform, fair and transparent.

Patient Education of Eligibility for Assistance (Instructions, p. 15)

Question 3 of Part VI requires that each organization describe how they inform and educate patients about their eligibility for assistance under various government programs or under the organization's charity care policy. The Instructions with respect to this reporting requirement provide a number of "examples" of ways in which this education can occur. All of these five examples are critical components of a tax-exempt hospital's financial assistance program and are necessary to ensure that eligible patients don't fall through the cracks. Thus, rather than include them as "examples," we would urge the IRS require organizations to report affirmatively or negatively on each method.

Permission to Use Other Costing Methodologies (Instructions, pp. 1, 7)

We applaud the Service's decision to require charity care and other community benefits to be valued at cost. This provides a far more accurate view of the value of services the hospital organization provides and promotes consistency in reporting. However, we question that the draft Instructions permit organizations to select their own methodologies when computing these costs in Worksheets 1 and 2, which are not filed with Form 990. To avoid introducing an element of variation in reporting, we recommend that the IRS require hospitals to use one costing methodology for the purpose of determining the value of the services they provide. We believe the most uniform and least burdensome method is the cost-to-charge ratio, by service, as calculated by hospitals in preparing their Medicare Cost Reports.

Treatment of Unrestricted or Restricted Grants (Instructions, pp. 1, 7)

We believe community benefits are the *unreimbursed* goods, services and resources provided by health care institutions that address community identified health needs and concerns, particularly of those who are uninsured or underserved. As drafted, the Instructions do not require that hospitals count "grants restricted for community benefit activities" as direct offsetting revenue when determining their net community benefit expenses. This provision is troubling as it appears to be contrary to the very foundational definition of community benefits. We strongly recommend that grants received for community benefit activities should be treated as offsetting revenue for the purposes of determining net community benefit expenses. We note that revenue from these grants may be offset by the costs associated with seeking the grants—costs that may be reportable in the community benefit operations section.

Revenue from Uncompensated Care Pools (Instructions, p. 16)

Worksheets 1 and 3 require that organizations report "revenue from uncompensated care pools or programs, meaning payments received from a state, including Medicaid DSH funds…" We recommend that the IRS amend this statement to also include payments received from counties or other municipal authorities.

Primary Purpose Test (Instructions, pp. 2-3, 16; Worksheets 1 and 3)

We support the Service's use of the "primary purpose requirement" in its treatment of Medicaid and provider taxes and revenue from uncompensated care pools as costs and revenues associated with charity care. We believe that using this test will best promote transparency while also accommodating the differences among states' allocation of uncompensated care pools, including DSH payments.

Treatment of Medicare in Reporting Charity Care and Other Community Benefits (Instructions, p. 2; Worksheets B, 5, and 6)

The draft Instructions allow hospitals to report Medicare revenues and expenses in Part I's Table of charity care and community benefits costs "only to the extent that [they] are related either to… subsidized health services…or to Medicare GME that is reportable as health professions education." All other Medicare costs and revenues must be reported in Part III of Schedule H.

We appreciate that the Service limits the inclusion of health professions education as community benefits to situations in which, by the Service's definition, such education provides a greater boon to the community than to the reporting organization. We would advise the Service, however, to incorporate an even more targeted approach. Health care service providers should be required to demonstrate the link between their educational activities and the identified health care needs of the targeted community. Only those health professions educational activities that can be linked in this way should be reported as community benefits. Therefore, we urge the IRS to amend the language in the

Instructions to Worksheet 5 so that it matches that of Worksheet 6: "In order to qualify as a reportable health professions education activity or program, the organization must provide the activity or program *because it meets an identified community need*."

Medicare Shortfall (Instructions, p. 10)

While the Instructions expressly prohibit hospitals from claiming Medicare shortfalls as community benefits, they do allow organizations to describe in Part VI the extent to which the Medicare shortfall they claim should be *treated* as a community benefit. The Instructions require that the rationale for such inclusion must have a "reasonable basis"; however, they fail to provide additional guidance or definition about what is "reasonable." Without sufficient guidance on the definition of "reasonable," this becomes a potentially troubling loophole. Generally speaking, the Medicare Payment Advisory Commission (MedPAC) views Medicare payment rates as adequate.[1] While MedPAC acknowledges that hospitals may differ, it strongly suggests that hospitals are responsible for controlling costs rather than simply claiming payment inadequacy. Therefore, we recommend the following guidance for organizations wishing to treat their Medicare shortfall as a community benefit: Organizations must provide a narrative that demonstrates that their facilities are efficient. Efficiency may be demonstrated in a number of ways, including by providing data on their case-mix-adjusted-cost per discharge, compared to their peers.

Foreign Hospitals (Instructions, p. 3)

We generally agree with the Service's approach to the inclusion of data from foreign hospitals, with one small modification. If organizations choose to include data from foreign hospitals in Parts I, II, III or V, they *must* be required to provide detail about this component of their community benefits report in Part VI.

Subsidized Health Services (Instructions, pp. 3, 22)

We applaud the Service for specifying that "in order to qualify as a subsidized health service, the organization must provide the service because it meets an identified community need." We believe that organizations may include the portion of costs to conduct a physician clinic or skilled nursing facility only if those costs are related to services for patients in the community that are typically underserved. Organizations should not be permitted to include costs associated with services that are otherwise reimbursable.

"Certain Other Community Benefits" and "Community-Building Activities" (Instructions, pp. 6, 8-9, 14)

Part I, lines 7e – 7i of Schedule H requires organizations to report "certain other community benefits" at cost. These benefits include: community health improvement

[1] See, e.g., Medicare Payment Advisory Commission, Report to the Congress: Medicare Payment Policy, Section 2A, Hospital Inpatient and Outpatient Services, March 2008.

services and community benefit operations, health professions education, subsidized health services, research and cash and in-kind contributions to community groups. Each of activities listed within these categories may be rightfully claimed as "certain other community benefits," but we strongly urge that the Service require the activities within these categories be listed in Part VI, and not just on unfiled worksheets. Also, in reporting "certain other community benefits," nonprofit hospital organizations should also be required to describe in Part VI – as the Service already requires for "community-building activities – how they "provide community benefit and promote the health of the communities [they] serve." Finally, the Service should require reporting organizations to demonstrate that all activities reported as "community benefit" are "responsive to an identified community need," as established through a needs assessment process.[2] We recommend that the needs assessment process include both an analysis of the most recent public health data and a mechanism for engaging — at regular intervals — members of the community served.

Examples of Community Benefits (Instructions, pp. 3, 9)

We applaud the Service for its efforts to provide a number of good examples of activities that hospital may claim as community benefits. As noted above, each of the examples provided may indeed be considered a valid community benefit *provided that* they can be connected to an identified need within the community the hospital serves.

We note, however, that the list of community-building activities includes "leadership development and training of community members" and that the examples provided include leadership and training with regard to "medical interpreter skills for community residents." We strongly urge the Service to exclude this example because medical interpreter services must be provided in order to ensure patients have "meaningful access" to health care services. While they are to be commended for training community members in this way, nonprofit hospital organizations should not be allowed to claim as "community benefit" a service so closely related to what they are already required to provide and for which they are typically reimbursed.[3]

Augmenting Organizational Filings with Individual Documentation

While the Service has already decided to allow nonprofit hospitals to report on an EIN, or organizational, basis, there are certain instances in which requiring hospital systems to attach individual, hospital-specific documentation would capture the level of information necessary to achieve the Service's objectives of accuracy and transparency in reporting.

These include the following:

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[2] This standard is articulated in the draft Instructions as pertaining only to the sections related to subsidized health services; and community health improvement services and community benefit operations.

[3] See U.S. Department of Health and Human Services, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons.* Available at http://www.hhs.gov/ocr/lep.

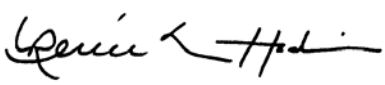
- An organization that lacks written charity care policies should at least be required to provide a description of the unwritten policies practiced in each of its hospitals in Part VI (Instructions p. 5).
- An organization or any of its component parts that prepare budgets for charity care should be required to attach them to the organization's Schedule H submission (Instructions p. 6).
- Reporting organizations should attach any annual written reports that describe hospital programs that serve the community, community benefit reports, descriptions of their hospitals' communities, and needs assessments conducted by individual hospitals (Instructions p. 6).
- Organizations should be required to attach written debt collection policies for each of its hospitals (Instructions pp. 12, 14).

Use These Reporting Requirements as the Basis for Standards

Finally, the revision of Form 990 and the inclusion of Schedule H underscore the need to develop clearer standards for community benefits. The community benefit standard has not been updated since 1969. In the near 40 years since its enactment, much has changed in our health care environment. Today, more than ever, tax-exempt hospitals have an important role to play in helping to address the health care needs of the communities they serve. It is time to clarify the obligations of tax-exempt hospitals and establish firm standards for what is required of them in exchange for the valuable tax-exemptions they receive. The information required in the new Schedule H could serve as the basis for these standards, and we urge the Service to take up this important task in the coming year.

We welcome the opportunity to work with your office as you finalize the Instructions to this very important Schedule.

Sincerely,



Renée Markus Hodin
Project Director
Community Catalyst

Jessica L. Curtis
Staff Attorney
Community Catalyst

ALSO ON BEHALF OF:

ACORN – Association of Community Organizations for Reform NOW
New Orleans, Louisiana

Arkansas ACORN
Little Rock, Arkansas

Center for Disability Issues and the Health Professions
Western University of Health Sciences
Pomona, California

Coalition of Wisconsin Aging Groups
Madison, Wisconsin

Colorado Consumer Health Initiative
Denver, Colorado

Community Legal Services, Inc.
Philadelphia, Pennsylvania

Congress of California Seniors
Sacramento, California

Connecticut Citizen Action Group
Hartford, Connecticut

Consumers for Affordable Health Care
Augusta, Maine

Disability Health Coalition
Sacramento, California

Empire Justice Center
Rochester, New York

Florida CHAIN
Hollywood, Florida

Florida PIRG
Tallahassee, Florida

Health Care For All
Boston, Massachusetts

Health Law Advocates
Boston, Massachusetts

Health Rights Hotline
Sacramento, California

Human Services Coalition
Miami, FL

Independent Living Resource Center San Francisco (ILRCSF)
San Francisco, California

Kentucky Task Force on Hunger
Lexington, Kentucky

Local 49, Service Employees International Union (SEIU)
Portland, Oregon

Maine People's Alliance
Portland, Maine

The Maryland Citizens' Health Initiative
Baltimore, Maryland

Maternity Care Coalition
Philadelphia, Pennsylvania

Mississippi ACORN
Jackson, Mississippi

Mississippi Center for Justice
Jackson, Mississippi

Naugatuck Valley Project
Waterbury, Connecticut

Nebraska Appleseed Center for Law in the Public Interest
Lincoln, Nebraska

Neighborhood Family Practice
Cleveland, Ohio

New Jersey Appleseed
Newark, New Jersey

New Jersey Citizen Action
Newark, New Jersey

North Carolina Fair Share
Raleigh, North Carolina

North Carolina Justice Center
Raleigh, North Carolina

Northwest Federation of Community Organizations
Seattle, Washington

Oregon Health Action Campaign
Salem, Oregon

Oregonians for Health Security
Portland, Oregon

Pennsylvania ACORN
Philadelphia, Pennsylvania

Philadelphia Unemployment Project
Philadelphia, Pennsylvania

SEIU Nevada
Las Vegas, Nevada

St. Louis Area Business Health Coalition
St. Louis, Missouri

Tennessee Health Care Campaign
Nashville, Tennessee

Tennessee Justice Center
Nashville, Tennessee

Texas ACORN
San Antonio, Texas

Texas Impact
Austin, Texas

Texas PIRG
Austin, Texas

The Access Project
Boston, Massachusetts

UHCAN Ohio
Columbus, Ohio

Utah Health Policy Project
Salt Lake City, Utah

Virginia Poverty Law Center
Richmond, Virginia

Western Center for Law and Poverty
Los Angeles, CA

From:	howard.schoenfeld us pwc
To:	*TE/GE-EO-F990-Revision;
cc:	john.edie;
Subject:	PwC Comments on Draft 2008 Form 990 Instructions, attached in PDF file
Date:	Friday, May 30, 2008 11:50:48 AM
Attachments:	PwC IRS letter RE Public Support Reporting_pdf.zip
	ATT1572167.txt

Regards,

Howard

Howard Schoenfeld – Washington National Tax Services
PricewaterhouseCoopers / 1301 K St NW / Suite 800W / Washington, DC 20005
/ ((202) 414-1717 / 7 (813) 207-3105

PRICEWATERHOUSECOOPERS

May 30, 2008

Form990Revision@irs.gov

RE: Draft 2008 Form 990 Instructions -- Apparent Failure of Form and Instructions to Allow Reporting of Value of Services or Facilities Furnished by Governmental Unit as Provided by Section 509(d)(6) in Certain Cases

Dear Sir or Madam:

The Draft Instructions for the Tax Year 2008 Form 990 require a charitable entity to use the same accounting method in filing its return that it regularly uses to keep its books and records. Therefore, an accrual method charity must use the accrual method in completing the Support Schedule in Schedule A for future tax reporting.

By way of contrast, for purposes of completing the Support Schedule for tax year 2007 (and prior years), the applicable Instructions required the use of the cash method of accounting. As we read the 2008 Draft Form 990 Instructions, the effect of this proposed change, unless clarified or revised, will have a dramatic adverse effect on the ability of a number of public charities to demonstrate their continued qualification under the public support test under section 170(b)(1)(A)(vi).

ISSUE

If a publicly supported organization classified under section 170(b)(1)(A)(vi) regularly prepares its financial statements using the accrual method, and such statements (in accordance with generally accepted accounting principles) treat a lease of land at no cost from a unit of government as an asset (amortized over the lease term), with the corresponding contribution revenue recorded entirely in the first year, how should the charity properly include on the Support Schedule for 2008 Form 990, Schedule A (Part II, line 3), the annual value of the lease -- a figure that is not reported as part of its accrual method financial statements -- in computing its public support test for the year or years in question?

Example

1. In 2000, Library X (a publicly supported charity) entered into a 50-year lease with a county government to use county-owned real estate to house its collections and make them available to the general public. Total cost of the lease = $1 per year.

2. The lease also includes a number of county services, such as trash collection, at no charge.

3. In accordance with generally accepted accounting principles, Library X, using the *accrual* method of accounting, reported in 2000 the present value of this lease as a

"contribution receivable asset" on its balance sheet with a corresponding increase to temporarily restricted contribution revenue on its financial statements, identical to the treatment of a multi-year pledge receivable.

4. In subsequent years, the multi-year lease receivable is reduced for the current year's use of the land, with an offsetting entry to expense, to reflect the use of the property (and services provided) for which Library X would otherwise have had to pay. Likewise, on an annual basis, the statement of activities will also "release" the current year's value of the lease from temporarily restricted net assets and reflect it as going into the unrestricted net assets category. Assuming the present value of the long-term lease was equal to or more than the value of the land in 2000, Library X will report no contribution revenue on its financial statements in 2001 and for the remaining lease term.

5. In accordance with the Form 990 instructions for 2007 (and prior years), the value of services donated to Library X, as well as the free use of facilities, are specifically excluded from being reported as a contribution on Part I (Revenue, Expenses, and Changes in Net Assets or Fund Balances), Line 1. The proposed instructions for the 2008 Form 990 require the same treatment. Therefore, on its 2007 (and prior years) Form 990, Library X did not treat the annual value of the lease as a contribution on Part I, Line 1.

6. However, Library X, in the past, reported and included the annual value of the lease as part of its Support Schedule (2007 Schedule A, Part IV-A, Line 21).

7. The annual value of the lease is based on a recent independent appraisal that measures the fair market value of the land to be $10 million and the fair market rate of return on such land to be 7 percent.

8. The annual fair value of the county services that are provided at no charge is $20,000.

9. The annual value of the use of the land is $700,000 (7 percent times $10 million).

10. The annual dollar value of the county services and the lease is $720,000 and this amount was entered as part of the Library's public support calculation on 2007 Schedule A, Part IV-A, Line 21.

ANALYSIS

Value of Services Provided by Governmental Unit Without Charge Qualifies as Public Support

In satisfying the public support test, public charities classified under section 170(b)(1)(A)(vi) are permitted to count as public support the "value of services or facilities furnished to the organization by a governmental unit without charge" (see 2007 Schedule A, Part IV-A, Line 21; and 2008 Schedule A, Part II, line 3). See also section 509(d)(6) and Treas. Reg. Section 1.170A-9(e)(8)(ii), example (a). The 2007 Instructions for Form 990, Part I, specifically state that the filing organization should "not include as contributions on line 1 the value of …items such as the

free use of materials, equipment, or facilities." Thus, public charities do not record the value of the furnished use of governmental property and services as a contribution on Form 990, Part 1, Line 1.

CURRENT 2007 Schedule A Instructions for the Support Schedule -- Required Use of Cash Method of Accounting

With respect to Accounting Methods, the 2007 Instructions for Form 990 (page 8) state as follows:

> "*Unless instructed otherwise*, the organization should generally use the same accounting method on the return to figure revenue and expenses as it regularly uses to keep its books and records." (Emphasis added)

Later in these same 2007 Instructions for Schedule A, Part IV-A (page 8), the organization is instructed "otherwise" as follows:

> "**Note**. The *Support Schedule* must be completed on the cash method of accounting."

CHANGE in Instructions for "Accounting Method": Draft 2008 Instructions for Form 990 Redesign

With respect to accounting methods, the Draft 2008 Form 990 Redesign General Instructions -- Core Form (April 7, 2008, Page 11) -- state as follows:

> "Unless instructed otherwise, the organization should generally use the same accounting method on the return to figure revenue and expenses that it regularly uses to keep its books and records."

This instruction is unchanged from the 2007 Instructions.

However, the Draft 2008 Schedule A Instructions (April 7, 2008, Page 4) make a significant change and state as follows:

> "When completing Schedule A, the organization must use the same accounting method it checked on Form 990, Part XI, *Financial Statements and Reporting*, line 1, or Form 990-EZ, line G. The organization must use this accounting method in reporting all amounts on Schedule A, regardless of the accounting method it used in completing Schedule A for 2007."

As a result of this significant change, if a charitable organization uses the *accrual* method of accounting to keep its books and records, then the instructions apparently require-- for 2008 and beyond -- the use of the accrual method to complete all of Schedule A, including the Support Schedule. In accordance with generally accepted accounting principles, a charitable organization that uses the accrual accounting method, must report the value of a lease from a governmental

unit at no charge as a "long-term contribution receivable asset" on its financial statements, amortized over the life of the lease. The value of such a lease is reported on its books and records as temporarily restricted contribution revenue in Year One, with a "release" or amortization of the annual amount each year from temporarily restricted net assets to Unrestricted Net Assets. However, the "release of restriction" is not identified as Contribution Revenue on the accrual financial statements.

In view of the above discussion and the 2008 Instructions as currently drafted, a section 170(b)(1)(A)(vi) publicly-supported charity using the accrual method of accounting will not be able to count annually as good public support the significant value of its "no charge" multi-year lease from a unit of government. If this instruction is not modified, the charitable organization is at risk that it could be reclassified as a private foundation. For this reason, we do not believe the proposed 2008 Instructions fully and fairly take into account the intended purpose and meaning of the section 509(d)(6) provision for the value of services or facilities furnished by a governmental unit.

Moreover, the 2008 Form 990 Schedule A Support Schedule is based on a five-year moving average. Having to include the accrual method value of governmental support all in Year One means that -- while the lease may be in effect for 50 years -- the value of that governmental support is not counted at all for years six through 50. We question the appropriateness of that result as being consistent with legislative intent.

We respectfully request that the 2008 Schedule A Draft Instructions be amended to clarify (or instruct otherwise) that a publicly-supported charity may include the annual value of its "no charge" lease with a governmental unit in preparing its Support Schedule, regardless of the accounting method used throughout the rest of its return. Failure to take this action would amount to an IRS administrative repeal of a Congressional mandate in section 509(d)(6) declaring that the term "support" includes the value of services or facilities furnished by a governmental unit without charge.

Thank you very much for your consideration in this matter. Please do not hesitate to contact us if you have any questions.

Sincerely,

Howard M. Schoenfeld, howard.schoenfeld@us.pwc.com, 202-414-1717
John A. Edie, john.edie@us.pwc.com, 202-414-1569
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PricewaterhouseCoopers LLP
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Washington DC 20005-3333

From: Brown, Rachel Elaine
To: *TE/GE-EO-F990-Revision;
cc: psmith@achp.org;
Subject: Comment on Instructions to Form 990
Date: Friday, May 30, 2008 11:52:53 AM
Attachments: ACHP comment.DOC

Dear Sir or Madam,

Please find attached a comment on behalf of Alliance of Community Health Plans and its members with respect to the draft instructions to the 2008 Form 990, and in particular to Schedules A and H and the Glossary. ACHP and its members appreciate the opportunity to comment on the proposed draft instructions to the Form 990 and commend the IRS on the redesigned Form 990 and draft instructions.

Thank you,
Rachel Elaine Brown

<<ACHP comment.DOC>>

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May 30, 2008

Via E-mail and Regular Mail

Lois G. Lerner
Director, Exempt Organizations
Internal Revenue Service
Tax Exempt/Government Entities

Ronald J. Schultz
Senior Technical Advisor
Internal Revenue Service
Tax Exempt/Government Entities

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Ms. Lerner and Mr. Schultz:

I am writing to provide comments on the April 7, 2008, draft instructions to the 2008 Form 990 on behalf of the Alliance of Community Health Plans ("ACHP") and its member plans. ACHP is an association of health plans that provide or arrange for the provision of health care to voluntarily enrolled populations in seventeen states and the District of Columbia. The majority of ACHP's members are nonprofit, tax-exempt health plans described in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code").[1] These tax-exempt plans enroll approximately 15 million individuals nationwide. ACHP is a District of Columbia nonprofit corporation exempt from federal income tax under Section 501(a) of the Code because it is described in Section 501(c)(4) of the Code.

ACHP and its members commend the Internal Revenue Service ("IRS") on the redesigned Form 990 and draft instructions overall. We believe the revisions will succeed in promoting transparency and compliance, and that nonprofit organizations as well as the IRS, state governments, the media and the public will benefit from clear and consistent instructions with respect to the 2008 Form 990. However, we do have a few technical comments, which are set forth below.

[1] Unless otherwise specified, all citations herein are to the Internal Revenue Code of 1986, as amended, or to Treasury Regulations promulgated thereunder.

<u>COMMENT TO SCHEDULES A, H</u>: Schedules A and H should clearly state that Schedule H is limited to licensed hospitals and the Glossary should acknowledge the broader definition of hospital historically applied under Section 170(b)(1)(A)(iii).

The draft instructions do not acknowledge that the definitions of "hospital" for purposes of Schedule A and Schedule H are different. The General Instructions to Schedule A provide that organizations that are described in Section 501(c)(3) and are public charities are required to complete Schedule A. The Specific Instructions to Part I, Line 3 of Schedule A instruct an organization to check the box on Line 3 if its main purpose is to provide hospital or medical care. Using the broad definition in Section 170(b)(1)(A)(iii) of the Code, the IRS historically has categorized together hospitals and other health care organizations, including skilled nursing facilities, clinics, multi-specialty group practice plans, medical research facilities, and other non-hospital providers. Schedule A correctly reflects this broad classification, based on a long standing policy that these organizations should have an automatic claim to public charity status. However, a "Tip" informs an organization that checks the box on Line 3 that it must also complete Schedule H.

In contrast, Schedule H is new and has been designed specifically for state licensed hospitals. A hospital required to complete Schedule H is a facility that is (or should be) licensed or certified by a state as a hospital and clearly does not encompass the range of health care organizations described in Section 170(b)(1)(A)(iii) of the Code. Neither Schedule A nor Schedule H expressly acknowledges that a hospital is defined differently for each Schedule, and both Schedule A of the Form 990 and the draft instructions to Schedule A include statements with respect to completing or attaching Schedule H that conflict with the instructions contained in Schedule H. Moreover, the definition of "hospital" in the Draft Glossary reflects only the Schedule H definition.

ACHP applauds the IRS for determining that Schedule H should be completed only by facilities licensed or certified by a state as a hospital. However, ACHP believes that the lack of clarity in Schedules A and H and the Draft Glossary and the lack of acknowledgement that the definition of hospital is different for purposes of Schedules A and H will confuse taxpayers. This could undermine the goal of the IRS to gather meaningful data to help ensure proper oversight of nonprofit hospitals because numerous organizations that are not state licensed or certified hospitals, and were not intended to be required to complete Schedule H, may nevertheless struggle to do so. Accordingly, to clarify that organizations checking the box on Line 3 on Schedule A are not necessarily required to complete Schedule H as a result of the differing definitions of hospital, ACHP recommends that the instructions to Schedule A be revised to eliminate the "Tip," and Schedules A and H should each include an express statement that hospital is defined differently for purposes of public charity status reported on Schedule A and community

benefit and hospital operating characteristics reported on Schedule H.[2] In addition, the Draft Glossary should contain an explanation that "The Code Section 170(b)(1)(A)(iii) definition of hospital for purposes of qualifying for public charity status as reported on Schedule A may be broader."

On a recent educational teleconference, an attendee asked an IRS participant whether a free-standing skilled nursing facility could choose to complete Schedule H voluntarily. The IRS participant responded that "that would be OK, though it might taint our data." ACHP recommends that the IRS clearly instruct taxpayers who are not state licensed hospitals not to complete Schedule H so that the IRS and other users of Form 990 will be able to draw meaningful conclusions from the data it develops. As noted in ACHP's September 11, 2007, comments, the revision to Form 990 offers a unique opportunity for the IRS to be able to gather objective and comparable information about tax-exempt hospitals without being hampered by the broader historical definition of hospital developed under Section 170(b)(1)(A)(iii) of the Code. The IRS should do its best to ensure that the Schedule H data reflects only hospitals. Taxpayers who are not state licensed hospitals can voluntarily describe their community benefit activities in their Statement of Program Service Accomplishments in Part III of the Form 990 and on Schedule O.

* * *

The comments above build upon the comments we filed on the draft Form 990 on September 11, 2007. ACHP believes that Congress, the Treasury and the nonprofit sector all will benefit from the ability of the IRS to make comparisons and draw conclusions about tax-exempt hospitals based on consistent data developed in response to the new, narrower definition of "hospital" developed for Schedule H.

ACHP and its members appreciate this opportunity to comment on the proposed draft instructions to the 2008 Form 990. We stand ready to work with the IRS and other interested parties to help clarify or improve the instructions in any way the IRS believes worthwhile. We hope this comment is helpful and accepted in the spirit of cooperation in which it is submitted. Again, we commend all of the IRS officials and outside advisors involved in the effort to redesign the Form 990 and instructions.

[2] Also, you may wish to expressly direct cooperative hospital service organizations not to complete Schedule H. We note that the Instructions cited above similarly indicate that cooperative hospital service organizations claiming Section 170(b)(1)(A)(iii) status must attach Schedule H.

Sincerely,

T. J. Sullivan
On behalf of ACHP

cc: Patricia Smith

DC01/ 541197.3

From: Lilly Thomas
To: *TE/GE-EO-F990-Revision;
Subject: CUNA Comment Letter on Form 990 Draft Instructions
Date: Friday, May 30, 2008 11:57:21 AM
Attachments: IRS 990 instructions Comment Letter .doc

The attached letter are comments submitted by the Credit Union National Association on the Form 990 Draft Instructions. Feel free to contact me if you have any questions.
Thank you,

Lilly Thomas
Assistant General Counsel
Credit Union National Association
Pennsylvania Ave NW Suite 600 S. Bldg
Washington, D.C, 20004-2601
Phone 202-638-5777 Fax 202-638-7052

CUNA
Credit Union National Association
601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734
cuna.org

VIA EMAIL: Form990Revision@irs.gov

June 1, 2008

Internal Revenue Service
Draft 2008 Form 990 Instructions
ATTN: SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Re: REG-143787-06

Dear Madam/Sir:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Internal Revenue Service's draft instructions and schedules to the redesigned Form 990, Return of Organization Exempt from Income Tax. By way of background, CUNA is the largest credit union trade organization in this country, representing approximately 90 percent of our nation's approximately 8,300 state and federal credit unions, which serve more than 90 million members.

Summary of CUNA's Views

The proposed changes to the draft instructions for completing IRS Form 990 reflect the recent changes to that form. The draft instructions include a general overview of the form and schedules explaining their purpose, description of who must file a particular schedule, and line-by-line explanations. The draft instructions also contain new information including a comprehensive glossary of terms, a compensation table, and illustrative examples.

We appreciate the need for the Internal Revenue Service (Service) to update the instructions consistent with the new form. However, we have a number of concerns regarding the draft. A summary of CUNA's views is addressed below.

- The instructions for compensation will result in filers reporting inflated figures that reflect certain reimbursements not generally considered to be compensation.

- The thresholds for reporting employee compensation is too low and would include employees without sufficient authority or control at the workplace.
- The requirement to itemize specific data on group returns is unnecessary, and the information should be provided on a consolidated basis as permitted in the Internal Revenue regulations.
- Also for group returns, parent organizations should be permitted to change the method of filing without having to receive IRS consent. Providing a notice of change to the Service should be sufficient.
- The definition of "key employee" is overly broad and could result in unintentionally including the personal salaries of department heads, middle-managers and other employees who do not have the responsibilities, power or influence of "key" personnel.

Discussion of CUNA's Views

Reporting Executive Compensation

CUNA is concerned that the requirement to report nontaxable expense reimbursements and fringe benefits will result in filers having to report figures that inflate compensation and do not reflect what most individuals consider to be compensation. We urge the Service to develop instructions that reflect reporting requirements that do not unintentionally result in compensation that is exaggerated. In that connection, nontaxable expense reimbursements and fringe benefits should not be included as "compensation." Also, we suggest setting compensation thresholds that are adjusted geographically to reflect differences in cost of living.

Part VII of the Core Form must be completed regarding an organization's current officers, directors, and trustees regardless of the amount of compensation they receive as well as its five current highest compensated employees who receive reportable compensation of more than $100,000. Schedule J must be completed for any current individual whose reportable compensation was greater than $150,000.

While we appreciate the Service raising the threshold for reporting the five highest compensated employees from $50,000 to $100,000, we believe this step does not go far enough to prevent the inclusion of unintended employees. At a minimum, the threshold should be consistent with that of "key employee," which is set at $150,000. Also, as suggested above for executive compensation generally, we believe the threshold should account for the geographical differences in cost of living.

Group 990 Filings

Appendix E has been added to the draft instructions, which details instructions directed to group filers. It clarifies that when an organization files a group return (the central organization) on behalf of a group of entities (the subordinates), it must aggregate data unless it is otherwise instructed to list individual data for each subordinate.

Appendix E further states that when listing the five highest compensated employees (Core form, Part VII, line 1a), the central organization may not aggregate the data and must include the five highest compensated employees for each subordinate.

We believe that a central organization should be permitted to aggregate this information regarding its subordinates. IRS rules regarding group returns state that when a central or parent organization provides information on the names, addresses and compensation of officers, directors, trustees, key employees and the five highest compensated employees of subordinates, it can provide the information on a consolidated basis for all subordinates. 26 CFR 1.6033-2(d)(5)(ii).

In our view, if the Service whishes to change this policy, it must do so only after a notice and comment procedure under the Administrative Procedure Act (APA).

Appendix E contains special instructions regarding the compensation section of the Core form (Part VII) and the compensation of individuals reported in Part II of Schedule J. The central organization must select a method of filing its group return, either filing separately these parts for itself or filing a single consolidated form. Once a method is adopted it can be changed only with IRS consent.

Parent organizations should be permitted to change the process they use to file their returns without having to receive IRS consent. We do not believe the Service has provided sufficient explanation for requiring advance permission and question why prior IRS approval is required. We believe providing a notice of change to the Service in advance of filing should be sufficient.

Concerns with Some Proposed Changes

The Service modified the definition of “key employee” in an effort to include those individuals who have executive authority, but do not fall under the Service’s definitions of director, officer, or trustee.

We have concerns that the proposed definition is overly broad and would result in unintentionally including non-crucial employees who do not have the kind of authority that would justify reporting their compensation.

We believe the five percent threshold is too low and would require organizations to include the individual salaries of department heads, middle-managers and other employees that do not have the level of responsibility, power or influence that warrants the reporting of their compensation. Additionally, it may be difficult for smaller organizations, such as credit unions, to identify and assign discrete activities to individual employees since functions often overlap within departments, and employees may share responsibilities.

Lastly, we appreciate the Service's clarification of reporting "other liabilities" on Group 990 returns (Schedule D Part X), by stating that an organization may summarize the portion of the FIN 48 footnote that applies to the liability of multiple organizations. However, we disagree with the overall requirement to provide the text of the organization's FIN 48 footnote in Part VII of Schedule D.

To our knowledge, this requirement does not exist on other tax forms, and does not serve the purpose for which Form 990 is intended, which is to provide an accurate picture of the organization allowing stakeholders to compare it to similar organizations, and to correctly reflect the organization's operations and use of assets for tax purposes as stated by the IRS. Organizations must already report any unrelated business income on Form 990 and 990-T. Requiring the text of its FIN 48 footnote incorporates duplicate line-items which would likely be confusing to the general public.

Thank you for the opportunity to express our views on the proposed changes to the draft instruction to Form 990. If you have questions about our letter, please do not hesitate to give Lilly Thomas, Assistant General Counsel or me a call at 202-508-6736.

Sincerely,

Mary Mitchell Dunn

Mary Mitchell Dunn
SVP and Deputy General Counsel

From: Michael Ripple
To: *TE/GE-EO-F990-Revision;
Subject: Comment: Form 990 Instructions
Date: Friday, May 30, 2008 12:01:57 PM

May 30, 2008

Internal Revenue Service
Form 990 Redesign, SE:T:EO
111 Constitution Avenue, NW
Washington, DC 20224

Email –

Dear Sir or Madam:

Thank you for this opportunity to comment on the draft instructions to the recently revised 990 and related schedules. We greatly appreciate the efforts you have made to receive comment on the Form revisions and the trainings which accompanied that effort.

The Massachusetts Council of Human Service Providers, Inc. (Providers' Council) is a 501 (c) (4) membership organization. Our member organizations are primarily 501 (c) (3) entities that deliver human, social and rehabilitative services that reach one in 10 of the state's most vulnerable residents. These agencies are distinguished by the fact that their primary source of revenue is derived from contracts with the Commonwealth. The rates paid for these services have been largely level funded for two decades.

The Providers' Council appreciates the clear effort the IRS has made throughout the past year to listen to and consider what individuals and organizations are saying regarding the annual reporting forms. The regulatory process for this redesign has been open, inviting, and demonstrated flexibility in considering remarks of many nonprofit organizations of all sizes and varieties. Further, as a member, we have benefited from the work of the National Council of Nonprofit Associations (NCNA) which has also had an active role in studying these forms

and instructions.

In the course of our efforts to gather feedback from our members, like the NCNA we have found that it has been difficult to get nonprofits in the field to give this review thorough consideration and we are concerned that their voices will not be adequately represented given the time constraints. As the NCNA reported, feedback on the issue of reporting on compensation has indicated that this will take "much more studying" and, for example, "the entire issue of reporting compensation is tremendously confusing – so confusing that I'm not sure my comments are very helpful."

The reality is that as important as the IRS timing is in finalizing these draft instructions for use for the 2008 FY filing, what is occupying the time of small to midsize nonprofits right now is their 2007 FY filings using the old forms. The IRS may well find that comments and questions regarding the instructions will happen when nonprofits are actually filing the revised form next year and putting numbers and narrative to paper. With this in mind we ask that you consider reworking the instructions after the initial use when a more substantive and practical review has occurred.

We are aware that some information will require changes immediately to capture data/information needed to fully complete the form next year. This will require extensive outreach to the field instructing them on capturing data in new ways in order that they have the needed information to file the form correctly. We join with the NCNA in their request to work in partnership with the IRS to develop "easy-to-use guidelines" for use by nonprofits as they report their 2008 financial data. This information will be widely shared with the field through the broad network of state nonprofit associations. We fully support the recommendation of the NCNA that a partnership with the IRS, NCNA, and state associations be formed to create seminars or webinars to get the word out as widely as possible. We believe the most critical task at hand is ensuring nonprofits are capturing financial and other data as they start their new fiscal year. The Providers' Council trains hundreds of nonprofit employees annually and would be available to assist in this task. Finally, we hope there will be some opportunity for comment on the changes to the 990-EZ as nonprofits begin the filing process.

We are optimistic that the IRS will continue to have an open process going forward. We look forward to the opportunities established by the Service for continuing to be in conversation with the sector about the final implementation of this multi-year overhaul of the filing system.

Thank you for your consideration of this request.

Sincerely,

Michael Weekes, President/CEO

Massachusetts Council of Human Service Providers, Inc.
250 Summer Street – Suite 237
Boston, MA 02210
617.428.3637

From: Brad Steele
To: *TE/GE-EO-F990-Revision;
Subject: Comments on the Draft Instructions to the Form 990 Revisions
Date: Friday, May 30, 2008 12:07:38 PM
Attachments: 990 Comments.pdf

Please find attached the National Club Association's Comments on the Draft Instructions to the Form 990 Revisions.

Thank you for your consideration.

Brad D. Steele, Esq.
Vice President of Government Relations
National Club Association
1201 15th Street NW, Suite 450, Washington, DC 20005
202-822-9822 800-625-6221 Fax: 202-822-9808
www.nationalclub.org

Advocate for Clubs, Answers for Club Leaders

NATIONAL CLUB ASSOCIATION

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May 30, 2008

Lois G. Lerner
Director of the Exempt Organizations Division of the IRS

Ronald J. Schultz
Senior Technical Advisor to the Commissioner of TE/GE

Catherine E. Livingston
Deputy Associate Chief Counsel (Exempt Organizations)

Internal Revenue Service
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Lerner, Mr. Schultz and Ms. Livingston:

The National Club Association is the only Washington, DC-based trade association that represents the interests of the private golf club, country club and city club industry throughout the United States. We represent nearly 1,000 private clubs in almost every state in the country. Representative members of NCA include Augusta National Golf Club, Oakland Hills Country Club – home of the 2008 PGA Championship, The Duquesne Club and the Bohemian Club.

Most of our members are 501(c)(7) tax exempt entities, and they will be affected by the newly altered Form 990. It is in our capacity as the voice of the private club industry that we respectfully submit the following comments to the draft instructions for the new Form 990.

To begin, NCA would like to acknowledge the extremely hard work the IRS put into modernizing the Form 990. With the last major rewrite of this form coming nearly 30 years ago, much had to be done to reflect the changing time and the expanding needs of the IRS. You have done an admirable job. Additionally, NCA was pleased to have Mr. Schultz as a featured speaker to discuss these changes at our National Club Conference in April. His insights were very helpful and his perspectives were well regarded by our attendees.

While NCA and our members understand the need for the changes to this antiquated form, we do have some concerns regarding the alterations made to the compensation disclosure definitions as presented in the draft instructions. Specifically, we are quite alarmed at the newly expanded definition of "key employee" and the inclusion of the requirement to disclose the names and salaries of the top five employees who are not "key employees."

In the 2007 Form 990 instructions, the definition of "key employee" was clear, concise and met the needs of both the IRS and the private club industry. That definition focused on the employee having responsibilities similar to an officer, director or trustee and included the chief management and administrative officials of a private club. Typically, that "key employee" definition would include the CEO, CFO and COO positions. In the private club industry, the employees serving in such capacities could rightly be described as "key employees."

Unfortunately, the draft instructions now broaden this definition to include those who manage a discrete segment or activity of a club that represents 5% or more of activities, assets, income or expenses of a private club or those who have authority to control or determine 5% or more of the club's capital expenditures, operating budget or compensation for employees. This expansion of the definition now requires the disclosure of nearly all lower level club managers who make more than $150,000 per year.

To help clarify who would fall under this new definition, an example was provided. The example dealt with a dean of a university's law school and indicated that such an employee would meet this new definition of a "key employee." With very few exceptions, private clubs have little in common with major post-secondary educational institutions.

Our clubs are typically very small with minimal staff – usually one general manager. Under the GM, there are managers for the clubhouse, the golf course, the restaurants and the recreational facilities. Each of these individuals may manage a discrete segment of the club that represents 5% or more of the club's income or expenses, but none has the type of autonomy as a dean of a law school. Indeed, such control is only held by the general manager and, naturally, the governing board of directors of the club.

Because of the importance private club members place on the facilities and the food service at their clubs, many lower level managers receive salaries that would place them well within the definition of "key employee." However, the 5% threshold of control is hardly appropriate when their real duties and responsibilities are known.

For example, the golf course superintendent of a private club may make over $150,000 per year and he may spend more than 5% of the club's yearly budget on maintenance of the course, but his control over that expenditure is usually managed by the general manager and the club's golf committee. Thus, his inclusion in the "key employee" category is simply inappropriate.

NCA believes the $150,000 salary minimum is an appropriate indicator of who may be a "key employee." However, we believe that a return to the 2007 definition of "key employee," with an emphasis on the CEO, CFO and COO positions, would best satisfy our industry's concerns. Of course, if a broader definition of "key employee" is necessary, then it would be our recommendation that the 5% threshold be increased considerably before the final promulgation of these instructions.

Aside from the newly enhanced definition of "key employee," NCA has a further concern with the new requirement to disclose the top five highest compensated employees who make more

than $100,000 but who are not "key employees." Such a disclosure is seen as an extremely intrusive request from the federal government on private matters of individual citizens.

There is no doubt that 501(c)(7) entities receive a significant benefit by being tax exempt. And, in return for that benefit, private clubs must ensure they are still deserving of it each and every year. As such, the Form 990 is an important tool to help both the IRS and a private club maintain compliance with the law.

However, forcing the disclosure of the names and salaries of a club's highest compensated employees will place sensitive and highly private personal information out for the world to see. Exposing individuals to this kind of potential harm cannot be the intent of Congress as expressed in the internal revenue laws nor can it be the desire of the IRS as it determines whether to maintain a club's tax exempt status.

Disclosing the names and salaries of the top five highest compensated employees will in no way assist the IRS in determining if a private recreational organization is complying with its mandates under 501(c)(7). All NCA member clubs are organized for pleasure, recreation and other nonprofit purposes and the publication of their staffers' salaries will have no bearing on this fact. Additionally, disclosing these salaries will in no way aid in the protection against private inurement of earnings to shareholders because staffers are not private shareholders of a club. Thus, what they receive in compensation cannot be seen as inappropriate inurement.

Private clubs are exclusive facilities that offer upscale amenities to discerning individuals. Members of a private club pay a significant amount of money to join. They are required to do so because clubs may not earn revenue from sources other than their members' dues and member/guest charges. How those clubs choose to spend those funds is controlled by a club's board and by the individual members.

Private club members demand excellence from their staff and to maintain such staff they provide appropriate compensation. NCA believes the disclosure of this information to the general public serves no valid enforcement purpose. It is our recommendation that this requirement be removed from the new Form 990 for 501(c)(7) entities.

Throughout the Form 990 transformation process, the IRS stated that its decisions were based upon three guiding principles: enhancing transparency to provide the IRS and the public with a realistic picture of the exempt organization; promoting compliance by accurately reflecting the organization's operations so the IRS may efficiently assess the risk of noncompliance; and minimizing the burden on filing organizations. NCA believes that the changes promulgated to the Form 990 can accomplish each of these principles but that the IRS must consider each individual category of tax exempt entities separately when applying these principles.

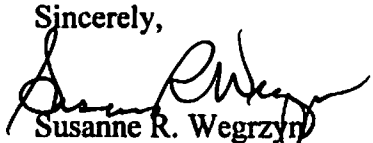
NCA firmly believes that in return for the benefit of tax exemption, private clubs should be open and transparent and that they should verify their compliance with the law. But, such transparency should focus on staffers who truly have control over the organization and the compliance review for 501(c)(7) organizations should not be open to the general public. Furthermore, we believe that to truly minimize the filing burden on 501(c)(7)s the IRS should

reduce the "key employee" and other salary disclosure requirements, not increase them. As presented, these requirements will double the burden on private clubs to comply.

There is no doubt that the work done to modify Form 990 was tremendously difficult and, in general, NCA believes that the end product is much better than the previous Form 990. However, we cannot help but notice that some of these new requirements seem far better suited for 501(c)(3) entities or any of the 501(c) organizations that rely heavily on donations from the general public. It is these entities that have had some issues in the past and it is these entities that truly can run afoul of the public trust. It is our hope that each of you will consider this as you review our comments.

As always, the National Club Association will look forward to working with you as this new form is implemented and we look forward to assisting our members as they become compliant with this new form. Working together, we will ensure that the tax exempt community is protected and responding appropriately to those it serves.

Sincerely,



Susanne R. Wegrzyn
President and CEO
National Club Association

From: dave.hayman@thrivent.com
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Draft Instructions to Form 990
Date: Friday, May 30, 2008 12:30:13 PM
Attachments: CommentsDraft990InstructionMay302008.doc

Attached are comments of Thrivent Financial for Lutherans on the draft instructions to Form 990.

Thank you.

David Hayman
Senior Counsel

625 Fourth Ave. S., Minneapolis, MN 55415-1665
Direct: 612-844-8174
Fax: 612-844-7062

Thrivent Financial for Lutherans®
625 Fourth Ave. S., Minneapolis, MN 55415-1624
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E-mail: mail@thrivent.com • www.thrivent.com

May 30, 2008

Internal Revenue Service
Draft Form 990 Instructions, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments on Draft Form 990 Instructions

Thrivent Financial for Lutherans ("Thrivent") appreciates the opportunity to provide comments on the draft instructions for the redesigned Form 990.

Thrivent is a fraternal benefit society and files both a group Form 990 for over 1,300 local branches, and a Form 990 for the parent society. Our comments primarily relate to the application of the draft instructions to the group Form 990.

Our overall impression of the draft instructions is very positive. We view the added detail in the instructions as helpful. In particular, we appreciate the addition of "Appendix E" which specifically addresses group return issues, and the new Form 990 Glossary.

We have a concern regarding the instructions for question 2 in Part VI of Form 990 as applied to Thrivent as group Form 990 filer. This question asks whether or not any officer, director, trustee or key employee has a family relationship or business relationship with any other officer, director, trustee, or key employee. The draft instructions state that the filer is to reference each such relationship in Schedule O.

Thrivent has over 9,800 volunteers who have been elected to leadership positions in its local branches. Explaining the business relationship questions to this number of volunteers as well as reporting these relationships would be a daunting task. It would also be very difficult for Thrivent to report relationships that may exist between leaders of different subordinates operating in different areas of the country.

We have two suggestions for modification of the instructions for this question. First, we suggest that the following provision be added to Appendix E to clarify that for group filers, the reporting relates to persons serving the same subordinate:

> **Part VI, line 2**. With respect to officers, directors, trustees, or key employees of subordinates, only report family or business relationships between persons who are officers, directors, trustees, or key employees of the same subordinate.

Second, we recommend amending the Core Part VI Instructions to restrict the application of question 2 in Part IV to officers, directors, trustees, or key employees who are not considered to be "independent" according to the instructions for Line 1b of Part VI. If a person is

considered to be “independent” under the instructions to Line 1b, such person received only reasonable payments, no material benefits, or financial benefits related to the exercise of the exempt function of the organization. We specifically suggest adding the underlined text:

> **Line 2. Relationships among officers, etc**. Answer “Yes” if any of the listed persons who are not considered “independent” for the purpose of question 1b had a family or business relationship with another listed person at any time during the organization’s tax year.

Our third comment relates to the parent society Form 990, but the issue is directly related to the fact that Thrivent has a large number of subordinate units. Thrivent provides millions of dollars per year to its local branches to support charitable activities. Schedule I, Part II, requires reporting of the amount of grants and assistance to governments and organizations in the United States if amounts provided to any organization exceed $5,000.

The instructions to Schedule I provide that “grants or other assistance” does not include grants to “affiliates” that are not “separately organized” from the filing organization.” Thrivent’s local branches are unincorporated associations chartered by the parent and in this respect not “separately organized.” However, they have separate taxpayer identity and are largely self-governing. It is not clear from the draft instructions that Thrivent would not be required to list each fraternal branch with the amount provided to that branch if over $5,000 in Part II of Schedule I.

We suggest that the instructions for Schedule I, Part II be clarified to provide that unincorporated associations chartered by the filing organization are not considered to be “separately organized.”

We hope that these comments are helpful. Please contact me if you have questions about these comments and suggestions.

Sincerely,

David M. Hayman
Senior Counsel
Thrivent Financial for Lutherans

From: Abby Levine
To: *TE/GE-EO-F990-Revision;
Subject: Comments on Form 990 instructions
Date: Friday, May 30, 2008 12:45:53 PM
Attachments: Form990Letter2008.pdf

Please accept the attached comments on the draft Form 990 instructions. In case you have difficulty opening the attachment, the text of our letter is included in this email.

Thank you.

Abby Levine

May 30, 2008

IRS
Draft 2008 Form 990 Instructions, SE:T:EO
1111 Constitution Ave., NW.
Washington, DC 20224

Submitted via email: _____

Alliance for Justice ("AFJ") submits these comments in response to the Service's request for comments on the draft instructions for the newly revision Form 990.

AFJ is a national association of environmental, civil rights, mental health, women's, children's, and consumer advocacy organizations. Our organization supports legislative and regulatory measures to promote political participation, judicial independence, and greater access to policy processes. We also provide training to numerous nonprofit organizations throughout the country with respect to the rules governing advocacy. While most of our members are organized as charitable and educational organizations under section 501(c)(3) of the Internal Revenue Code ("IRC"), a significant number also work with or are affiliated with social welfare and other advocacy organizations organized under IRC § 501(c)(4) and/or IRC § 527.

AFJ submitted comments regarding the form redesign on September 14, 2007, and is pleased that the Service heeded many of its suggestions. After looking at the final form and the draft instructions, we have chosen to submit comments on a few

specific issues.

The Service's stated goal of the revised Form 990 is to enhance transparency, promote tax compliance, and minimize the burden on reporting organizations. It has furthered this goal by providing the Glossary, Appendix, and other explanatory documents. Yet, many of the terms used in the Form and the schedules have not been defined. The lack of definition will prevent filers from filling out the form consistently.

Core Form

In Part III, line 2, organizations must indicate if they undertook new significant program service activities. The term "significant" is not defined, however. What standards should an organization use in determining whether a new program is "significant"?

For the first time, Part IX, line 11d of the core report requires all nonprofit organizations to report separately on certain expenses relating to lobbying as part of the general statement of functional expenses. Since this part of the form applies to all reporting organizations regardless of their tax status, what definition of lobbying activities should all 501(c) and 527 organizations use? Neither the instructions nor the glossary provide a definition.[1] May 501(h) electors use the tax code definitions of lobbying? Moreover, the instructions state that filers should include amounts paid for "legislation liaison services," yet that term is not defined.

Schedule C

The instructions for Schedule C, Part II-B, Line 2a state that non-electing 501(c)(3) organizations must answer "Yes" if its lobbying activities were substantial. The instructions (as well as the tax code and accompanying regulations) do not define substantial, and therefore require organizations to make a legal determination about whether they are in compliance with tax law.

In the definition of "Direct lobbying communications," we suggest the instructions incorporate ballot measure activity to be consistent with the regulatory definition.

The instructions for Part I-A, line 1 indicate that 501(c) organizations must describe their "direct and indirect political campaign activities" and that 527 organizations must describe their "exempt function activities." This recognizes the differences between the different types of tax-exempt organizations. However,

the instructions for line 3, which apparently is applicable to both 501(c) and 527 organizations, merely asks for the number of volunteer hours used for political campaign activities. It is unclear how 527 organizations, which engage in "exempt function activities" rather than "political campaign activities" are to complete line 3. We suggest that the instructions specify that only 501(c) organizations should complete line 3.

The instructions for Part I-B use different terminology than the form itself. On the form, 501(c)(3) organizations must report if they incurred excise taxes. The instructions state they should report the amount of taxes imposed. Please be consistent, and explain whether organizations should report taxes actually paid during the tax year or those imposed on activities conducted during the tax year.

We urge the Service to consider these comments before issuing a final version of the instructions for the redesigned Form 990.

Sincerely,

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[1] As mentioned in our September 2007 comments, we believe creating such an all-encompassing definition of lobbying will lead to significant confusion with respect to existing definitions under sections 501(c)(3), 4911, and 162(e), which have been in place for many years and which are applicable to portions of Schedule C. Yet, if the form uses a term, it must be defined so it is used consistently by all filers.

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